Supreme Court, U.S.
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CASE NO. _____

# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

In the Matter of the
Verified Accusation of
Attorney GARY L. ZERMAN,

Petitioner,

Against

Attorneys
R. BROWNE GREENE
and
MELVIN M. BELLI,

Respondents.

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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April 14, 1995

## QUESTIONS PRESENTED

Has the **"RULE OF LAW"** collapsed in the State of California?

(1) Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct filed by petitioner - in total disregard of an explicit statutory scheme (California Business & Professions Code, §§ 6108-6117) - a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?

(2) Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct filed by petitioner - in total disregard of a clear conflict of interest confronting the California Supreme Court - a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?

## LIST OF PARTIES

The parties in the proceeding below were Gary L. Zerman - a licensed California attorney and the CW-Complaining Witness, petitioner here; R. Browne Greene and Melvin M. Belli - the **"accused"** attorneys; and the State Bar of California - which repeatedly has acted **"arbitrarily"** and **"refused to take appropriate action"**.

## OPINIONS BELOW

The California Supreme Court's summary denial of the instant Verified Accusation, S037066, is reproduced in the attached appendix, at A.91. The U.S.D.C., Central District of California, order of dismissal in Ornelas, et al., v. Lucas, et al., Case No. CV 92 7246 RG, is reproduced in the attached appendix, at A. 95. The California Supreme Court's summary denial of the petition of the underlying legal malpractice case Ornelas v. Greene and Belli, S026070, is reporduced in the attached appendix, at A.104.

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**INVOLVED CONSTITUTIONAL, STATUTORY & RULE PROVISIONS**

**U.S. Const. amend V** provides in pertinent part: "No person shall be ... deprived of life, liberty or property, without due process of law ...."

**U.S. Const. amend XVI, § 1** provides in pertinent part: "... nor shall any state deprive any person of life, liberty or property, without due process of law ...."

**Federal Judicial Code 28 U.S.C. § 455(a)** (1974) provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned."

**Cal. Bus. & Prof. Code § 19** (1937) provides: "**Shall**" is mandatory and "may" is permissive."

**Cal. Bus. & Prof. Code § 6108** (1939) provides: "If the proceedings are upon the information of another, the accusation shall be in writing and shall state the matters charged, and be verified by the oath of some person, to the effect that

the charges therein contained are true. The verification may be made upon information and belief when the accusation is presented by an organized bar association."

**Cal. Bus. & Prof. Code § 6109** (1939) provides: "Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order."

**Cal. Bus. & Prof. Code § 6110** (1939) provides, in pertinent part: "The court or judge may direct the service of a citation to the accused, requiring him to appear and answer the accusation, ... if it appears by affidavit to the satisfaction of the court or judge that the accused either: (a) Resides out of the State. (b) Has departed from the State. (c) Can not, after due diligence, be found within the State ...."

**Cal. Bus. & Prof. Code § 6111** (1939) provides: "The accused shall appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he does not appear, the court may proceed and determine the accusation in his absence."

**Cal. Bus. & Prof. Code § 6112** (1939) provides: "The accused may answer to the accusation either by objecting to its sufficiency or by denying it. If he objects to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection. If he denies the accustion, the denial may be oral and without oath, and shall be entered upon the minutes."

**Cal. Bus. & Prof. Code § 6113** (1939) provides: "If an objection to the sufficiency of the accusation is not sustained, the accused shall answer within the time designated by the court."

**Cal. Bus. & Prof. Code § 6114** (1939) provides: "If the accused pleads guilty, or refuses to answer the accusation, the court shall proceed to judgment of disbarment or suspension. If he denies the matters charged, the court shall, at such time as it may appoint, proceed to try the accusation."

**Cal. Bus. & Prof. Code § 6115** (1939) provides: "The court may, in its discretion, order a reference to a committee to take depositions in the matter."

**Cal. Bus. & Prof. Code § 6116** (1939) provides: "When an attorney has been found guilty of the charges made in proceedings not based upon a record of conviction, judgment shall be refered disbarring the attorney or suspending him from practice for a limited time, according to the gravity of the offense charged."

**Cal. Bus. & Prof. Code §6117** (1939) provides: "During such disbarment or suspension, the attorney shall be precluded from practicing law. When disbarred, his name shall be stricken from the roll of attorneys."

**Cal. Evidence Code § 451(c) - Matters Which Must Be Judicially Noticed** - (1986) in pertinent part provides: **"Judicial notice shall be taken of the following"** (c) **Rules of Professional Conduct** for members of the bar adopted pursuant to Section 6076 of the Business and Professions Code and Rules of Practice and Procedure for the courts of this state adopted by the Judicial Council."

**Cal. Rules of Professional Conduct, Rule 5-102** (1975) provides: "(a) A member of the State Bar **shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest**, if any, in the subject matter of the employment. A member of the State Bar who accepts employment under this Rule **shall first obtain the client's written consent** to such employment. (b) A member of the State Bar **shall not represent conflicting interests, except with the written consent of all parties concerned.**" (The Rules were amended in 1988, opperative May 27, 1989, and Rule 5-102 was changed to Rule 3-310.)

**Cal. Rule of Court, Rule 952(d)** (1991) provides: "[Review of other decisions] A petition to the Supreme Court to review **any other decision** of the State Bar Court or action of the Board of Governors of the State Bar, or of any board or committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act, or of the chief executive officer of the State Bar . . . shall be filed within 60 days after written notice of the action complained of is mailed . . . . **Within 15 days after service of the petition, the State Bar may serve and file an answer and brief.** Within five days after service of the answer, the petitioner may serve and file a reply. If a review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after service of the brief, the petitioner may file a reply brief."

# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

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Verified Accusation of
Attorney GARY L. ZERMAN,

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Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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Petitioner Gary L. Zerman, as a licensed California attorney and as a **"private attorney general"**, requests that this Supreme Court issue a Writ of Certiorari, granting review of the January 18, 1995 summary denial by the California Supreme Court, Chief Justice Malcolm Lucas (A.91), of the verified accusation of attorney misconduct (A.2) filed pursuant to **Cal. Bus. & Prof. Code §§ 6108-6117**, by petitioner Gary L. Zerman, a California attorney, against attorneys R. Browne Greene and Melvin M. Belli, Cal. Supreme Court Case No. S037066.

## GROUNDS FOR JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257(a) (1988) to review the January 18, 1995 summary denial by the California Supreme Court of the verified accusation of attorney misconduct filed by petitioner.

This Court also has jurisdiction under the preamble of the U.S. Constitution to **"establish Justice"** and under the 1st Amendment right of the people **"to petition the Government for a redress of grievances."**

## PROLOGUE

In his introductory paragraph from Rule of Law - The ABA Has Fallen Down on the Job that appeared in the Wall Street Journal former Chief Justice Warren Burger wrote:

> **"The reputation of the legal profession is at its lowest ebb since I first started practicing law more than 60 years ago. With ever increasing frequency, the public is questioning the competence, integrity and honesty of lawyers. Indeed, over just the past few years, a number of judges and all too many lawyers have been guilty of self-dealing and other forms of professional misconduct in and out of the courtroom. These transgressions not only diminish the public's confidence in the profession, but they also subtly undermine the public's respect for the rule of law."** (August 10, 1994, page A11).

As will be shown below, unfortunately, both the California Supreme Court and the California State Bar have also - fallen down.

## STATEMENT OF THE CASE

On March 28, 1991 petitioner filed a formal complaint with the California State Bar (hereafter Bar) against attorneys Melvin M. Belli and R. Browne Greene, which set forth several charges of extremely serious misconduct and the indisputable proof.[1]

On March 10, 1993 the Bar sent petitioner a letter (see A.30) advising it had completed its investigation of the charges and had concluded that attorneys Greene and Belli had committed a violation of Rule 5-102.[2] For that violation the Bar disciplined Greene and Belli with - a mere private warning letter and told them not to do that again. The Bar also claimed, without explanation, that **"Given the circumstances in which the misconduct occurred"** this case was an **"exceptional circumstance"**. The other serious charges petitioner raised were simply ignored.[3] On March 25, 1993,

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[1]The acts of serious misconduct include: threats, repeated acts of fraud, disobeying trial subpoenas, undisclosed ex parte communications with the trial judge and acts of perjury. For a detailed list of these acts and the evidence, see A.8, A.41, A.71, ftnt. 5 and A.74, ftnt. 7.

[2]The "violation"was Greene and Belli, despite repeated express warnings (see A.42), representing conflicting interests not only without the clients' consent, but without ever disclosing the conflict to the clients - this was fraud! Ball v. Posey, 212 Cal.Rptr. 740, 749 (Cal.App.Ct. 1986); see also A.74, ftnt. 7. The Rules of Professional Conduct conclusively establish the standards governing the ethical duties of the attorney, which the court must take mandatory judicial notice of. Day v. Rosenthal, 217 Cal.Rptr. 89, 102 (Cal.App.Ct. 1985).

[3]Given the circumstances? Exceptional circumstance? The Bar provides no explanation for these arbitrary claims or its sham discipline of Greene and Belli - which flies in the face of the law. Beery v. State Bar, 739 P.2d 1289, 1296 (Cal. 1987) and Codiga v. State Bar, 575 P.2d 1186, 1187 (Cal. 1978); see also A.74 and A.10. Even more arbitrary is the Bar's inexplicable ignorance of the several other serious charges of misconduct. These arbitrary actions by the Bar have denied petitioner and the people of the State of

because of the Bar's sham discipline of Greene and Belli and its ignorance of the several other serious charges of misconduct, petitioner in a letter (A.32) appealed the matter to the Bar's Complainant Grievance Panel (hereafter CGP). Petitioner also made a request that the Bar/CGP explain its bald claim of **"exceptional circumstances."**[4]

On December 2, 1993 the CGP denied petitioner's appeal with a 1-page letter (A.61), which stated that **"the State Bar of California will take no further action. Because the Panel considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision."**[5] The letter concluded

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California due process. Saleeby v. State Bar, 702 P.2d 525, 523 (Cal. 1985); see also A.69, ftnt. 3.

[4]Petitioner's letter-appeal was addressed jointly to the CGP and Ms. Wachter, who wrote the above March 10, 1993 Bar letter. Ms. Wachter never replied, much less explained her claims; neither has the CGP. Copies were also sent to then Bar President Harvey Saferstein, his successor Margaret Morrow and Bar Chief Trial Counsel Robert Heflin; a request was also made that a copy be given to the Bar Board of Governors Chairman. Not one ever replied to explain those claims either. This is a denial of due process. Saleeby v. State Bar, 702 P.2d 525, 533 (Cal. 1985). Maybe "exceptional circumstance" refers to Greene and Belli having privileged status as past presidents of powerful CTLA - California Trial Lawyers Association? See LA Times December 27, 1994 p. A3 article Preemptive Strike, by Dan Morain, referencing the earlier "Napkin Deal" that the Trial Lawyers swung. Also see A.5, ftnt. 3.

[5]No further action? What action? All charges, but one were ignored and the discipline imposed on Greene and Belli - a mere private warning letter - was a **joke** - contrary to the law. Beery v. State Bar, 739 P.2d 1289, 1296 (Cal. 1987) and Codiga v. State Bar, 575 P.2d 1186, 1187 (Cal. 1978). The Bar fails to state what its findings/ conclusions were based upon, clearly because these actions were arbitrary and fly in the face of the law. Now the CGP follows suit. Closed and confidential meeting? Can not provide any details? Clearly this entire course of conduct by the Bar is not only a denial of due process (Saleeby v. State Bar, 702 P.2d 525, 533), but is obstruction of justice. Petitioner even

advising that if **"further review of the State Bar's actions"** was desired, a verified accusation (hereafter **VA**) could be filed against the attorneys with the California Supreme Court (hereafter CSC).

Petitioner contacted the CSC about the **VA** procedure and was sent a December 6, 1993 letter advising that the authority for filing **VAs** was set forth in **"Bus. and Prof. Code 6108"** and **"In re Walker, 32 Cal. 2d 488, 490"**.

On December 30, 1993 petitioner filed the instant **VA** (A.2) against attorneys Greene and Belli in the CSC. The **VA** asserted that petitioner had brought the serious charges of misconduct committed by attorneys Greene and Belli to the Bar, had followed all Bar procedures, but the Bar had handled the complaint/charges in an **"arbitrary, incompetent, and unlawful manner by refusing to apply and follow the law, by refusing to take appropriate disciplinary action required thereunder, and by refusing to grant a hearing against attorneys GREENE and BELLI."** The **VA** also asserted that the Bar had a long history of neglect. (A.12).

On November 10, 1994 petitioner also filed in this matter document **"FURTHER EVIDENCE OF FRAUD"** - referring to the conduct of the Bar. (A.52; see also A.67, ftnt. 2).

On January 18, 1995, the CSC filed its one-page, two-word, order **"PETITION DENIED."**, signed by Chief Justice Lucas. (A.91). Neither Greene nor Belli, nor the Bar ever filed a single document in response; nor did the CSC ever order, per Bus. & Prof. Code §6109, Greene, Belli or the Bar to answer/respond to the **VA**.

Petitioner asserts that the CSC has ignored indisputable serious attorney misconduct committed by attorneys Greene and Belli and a

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wrote the Bar (then President Margaret Morrow) on October 22, 1993 demanding to attend the CGP's meeting; there was no reply from either Ms. Morrow or the CGP.

Bar cover-up of that misconduct and thereby the CSC is guilty of a wilful **"evasion"** of its statutory and fundamental duties and thus has denied petitioner and the people of the State of California their rights to due process of law under the United States Constitution.[6]

Petitioner asserts that the conduct of the CSC and Bar present **"exceptional circumstances"** that invoke the jurisdiction of this Court to recognize these rights, **"to establish Justice"** and to restore the **"RULE OF LAW"**, once again in California.

## REASONS COMPELLING GRANT OF WRIT

Attorneys Greene and Belli committed several acts of serious misconduct. Those acts have been compounded by the Bar, which ignored that misconduct and thereby its own duties and the law. Those acts were further compounded by the CSC, which ignored both the illicit conduct of those attorneys and that of the Bar, and thereby its own duties and the law. With such conduct there is no **"RULE OF LAW"** in California. This Court must grant this Writ to restore the collapsed **"RULE OF LAW"** in California, because history has shown that in many ways - this state sets the trend. (See the April 17, 1995 cover story in **NEWSWEEK**, What A Mess - Disorder In The Court, at p. 26 and Money Talks, Clients Walk, at p. 32, concering the Simpson murder trial).

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[6]As stated in Williams v. Georgia, 349 U.S. 375, 399, (1954) this charge upon the integrity of a state supreme court is - **"serious"**.

## ISSUE I

**Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct - in total disregard of an explicit statutory scheme (California Business & Professions Code, §§ 6108-6117) - a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?**

With Cal. Bus. & Prof. Code, §§ 6108-6117 the California Legislature established a clear statutory scheme governing VAs. As set forth above, § 19 states that "'Shall' is mandatory". Section 6109 then directs: "Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order."[7]

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[7]The "INTRODUCTORY STATEMENT", adopted effective January 1, 1992, to the California Rules of Court, states:

> "The Judicial Council is established under article VI, section 6, of the Constitution of California, and is given various powers and responsibilities to improve the administration of justice. [P] Unless other wise indicated, each rule in these California Rules of Court was adopted by the Judicial Council under its constitutional authority to 'adopt rules for court administration, practice and procedure not inconsistent with statute,' or under authority granted by the Legislature. [P] Throughout the rules, 'shall' is mandatory, 'may' is permissive . . ."

Bus. & Prof. Code sections 6108-6117 therefore govern over Rule 952(d) (see Emslie v. State Bar, 520 P.2d 991, 999 (Cal. 1974) re "minimum standards" and fnt. 10, below at p. 10) and are mandatory upon the CSC. Moreover, although Rule 952(d) appears to be a catch all provision ("any other decision"), there is no reference to VAs.

Although §6108 specifically authorizes the filing of a **VA**, it is amazing that the only reported case citing §6108 is In re Walker, 196 P.2d 882 (Cal. 1948).[8] In pertinent part Walker states at pages 882-3: "We have concluded that this proceeding should be **dismissed without prejudice** and, as this appears to be the **first proceeding of this nature** which has been filed in this court or any other since the adoption of the State Bar Act (Stats. 1927, ch. 34; now Bus. & Prof. Code § 6000 et seq.), we deem it appropriate to state the reasons. [P] Prior to the adoption of the State Bar Act, proceedings seeking disciplinary action against members of the bar could be instituted only in the courts. . . . [P] Under the above-mentioned **sections 6100 to 6118**, this court obviously has the same powers which it previously possessed independently to entertain disciplinary proceedings despite possible duplication between such proceedings and others instituted before The State Bar, but we are of the view that as a matter of policy this court should not exercise those powers unless and until the accuser has followed the normal procedures by first invoking the disciplinary powers of The State Bar. (Bus. & Prof. Code, §§ 6075-6087). More specifically, **we believe it proper to dismiss an accusation filed in this court unless it appears form the accusation**: (1) that the accuser has set forth specific charges which, if proved, would constitute grounds for disciplinary action; (2) that the same specific charges have been previously presented in written form to the

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[8]It is amazing because the CSC in Beery v. State Bar, 739 P.2d 1289, 1296 (Cal. 1987) states:

> "'Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys.' (Citations)."

See reference to Beery and this quote in the VA at A.12 and A.63.

State Bar for the purpose of invoking its disciplinary powers; and (3) that following such presentation to The State Bar, it has arbitrarily failed or refused to grant a hearing on such specific charges or has arbitrarily failed or refused, after a hearing, to take appropriate action."[9]

A review of petitioner's **VA** (A.7-10), indisputably shows that the above three (3) elements, and much more, were in fact sufficiently plead. More importantly though, a review of the Bar's conduct shows that the Bar indisputably repeatedly acted **"arbitrarily", "refused to grant a hearing"** and repeatedly has **"refused to take appropriate action"**. (A.10 and A.66). That misconduct is obstruction of justice and is what compelled the filing of the **instant VA**. (A.13, ftnt. 7).

Yet here, it is clear that the CSC did nothing **"upon receiving"** petitioner's **VA, as required by §6109**. (A.94). It is also clear that the CSC never ordered Greene, Belli or the Bar to either answer or appear, as required by § 6109 and § 19. Why has the CSC ignored this clear law?[10]

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[9]The CSC found Mrs. Walker failed to make "any attempt to follow the normal procedures", which require first filing a complaint with the Bar. After the CSC "dismiss[ed]ing without prejudice" her VA, Mrs. Walker immediately refiled it again in the CSC, which this time promptly "denied" it, the following month. The importance of Walker is that the CSC is affirming sec. 6108 et. seq., the statutory scheme governing VAs; the CSC is recognizing and stating this is good and valid law. Regrettably though, with its future conduct, the CSC has "evaded" its duty to "order" the accused attorneys to "appear and answer" the VAs, as the facts below show there are no reported cases and the CSC claims it "keeps no statistics" concerning VAs. See research "disclosures" directly below.

[10]Moreover, in Emslie v. State Bar, 520 P.2d 991, 999 (Cal. 1974) the CSC stated:

> ". . . The legislative standards are but minimum standards which must be applied; this court retains inherent power to require additional standards if it is not satisfied that the

Research discloses that the CSC for quite sometime (since Walker) has done nothing about **VAs**, never granting a **VA**; and because it **"keeps no statistics"** we will never know if it ever ordered an accused attorney to **"appear and answer"** a **VA**. First, Walker itself states that Mrs. Walker's accusation was the **"first proceeding of this nature"** filed in the CSC since passed of the 1927 Bar Act.[11] Second, there are **zero** cases cited in the annotations under §6109. Third, petitioner Sheppardized Walker and the research shows that there are only two (2) reported cases that even cite In re Walker. One is Environmental Law Fund Inc. Corte Medera, 122 Cal.Rprt. 282, 285 (Cal.App. Ct. 1975), which does not involve a **VA**. The other is Bollotin v. Cal. State Personnel Board, 280 P.2d 509 (Cal.App.Ct. 1955). There plaintiff brought a civil complaint for damages (against Bar officials and several others not connected with the Bar), the court affirmed an order sustaining a demurrer to the complaint, stating at p. 511: "It **does accord the individual the right to invoke disciplinary action against an attorney in the Supreme Court**, upon a proper showing that 'The State Bar' has **arbitrarily failed or refused** to grant a hearing on such specific charges, or has arbitrarily

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legislative qualifications are sufficient. (In re Lavin (1935) 2 Cal.2d 324, 328 [41 P.2d 161])."

The legislature has spoken. Sections 19 and 6109 are clear and unequivocal: the CSC has a mandatory duty to "order the accused to appear and answer" when Walker allegations are sufficiently plead. Petitioner did that here, and more. What is equally clear and unequivocal, is that the CSC has ignored this law and its duty, and thereby ignored the legislature and the people of the State of California; and also ignored its own dictates, that these "standards are but minimum standards which must be applied". Where is the "RULE OF LAW"? Has it collapsed?

[11] As shown below, Walker not only was the "first" VA case considered by the CSC, but it was the last. See ftnt. 13.

failed or refused, after hearing, to take appropriate action.' [Citing Walker]. Plaintiff chose not to pursue that remedy."[12]

Third, as that research disclosed no further reported cases concerning **VAs**, petitioner wrote to the CSC seeking further information about **VAs**. Several CSC clerks advised petitioner that the CSC **"kept no statistics"** on **VAs and told petitioner to check with the Bar and Judicial Council**. Petitioner did, and those entities advised they also did not have information or statistics on **VAs** either.[13] (A.93).

Fourth, petitioner then spoke with Mr. Philip Carrizosa, who has reported on the CSC for the LA Daily Journal for 15-years, and he stated that he had seen and reviewed **"hundreds"** of **VAs** filed in the CSC over that time, but had **"never"** seen the CSC grant **"even one"**, yet **"many"** appeared **"to have merit"**. Petitioner asked Mr. Carrizosa (twice) to provide a declaration to support this petition; he

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[12]The interest here is paramount: the integrity of our legal system and government, and democracy itself. See Beery at ftnt. 8 above, re "Our principal concern" and Emslie at ftnt. 16 below, re "Government largely depends". Moreover, the Bollotin courts states the interest involved in bringing a VA is "right". Clearly the highest "due process" concerns are at issue here, as set forth in Saleeby at 533.

[13]In Beery, above, the CSC states "'Our principal concern is protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible standard for attorneys", yet the CSC, the Bar and the Judicial Council all "keep no statistics" on **VAs**. That appears more like no concern. That is no accountability. See Saleeby, at 535, and see petitioner's June 6, 1994 letter to CSC Chief Clerk, Mr. Wandruff, accusing that office and the CSC of obstructing justice (**"evasion"**)regarding their handling of **VAs**. (A.96). Neither Mr. Wandruff, nor anyone else from the CSC, ever replied.

declined stating **"my editor won't let me"**.[14]

Finally, on March 13, 1995 after receiving a copy of the CSC's **"docket sheet"** on this matter, petitioner called the CSC clerk's office and spoke with Mr. Charles Rossi, who advised he had been in that office for 17-years, and like Mr. Carrizosa had no knowledge of the CSC **"ever"** granting a **VA**.

It is indisputable that here, the Bar ignored the law and the serious misconduct committed by attorneys Greene and Belli. But why has the CSC ignored the above clear law and its clear duty to address and condemn that attorney misconduct, as well as the subsequent Bar cover-up? A brief look a the history of the Bar tells why.

In Saleeby v. State Bar, 702 P.2d 525, 529 (Cal. 1985) the CSC, Chief Justice Lucas wrote[15]:

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[14]Mr. Carrizosa made the same statement to attorney John DeRonde, regarding VA, S037043, that he filed against attorney Thomas Pfalzer in the CSC, which also was summarily denied despite indisputable serious attorney misconduct. Also see VA S042880 against attorneys Donna Peizer and Sandra McNabb, which was filed on in October 1994; there CSC has not acted yet, as required by sec. 6109. See Attorney discipline and the California Supreme Court: Transfer of Direct Review to the Courts of Appeal, (1984) 72 C.L.R. 252, 258, ftnt. 47, which references a 1983 article by Mr. Carrizosa on the CSC.

[15]Saleeby involved the CSC considering what due process the Bar was required to provide applicants (wronged clients) making claims to the Bar's Client Security Fund (hereafter CSF). At page 533, ftnts. 4 and 5, Chief Justice Lucas wrote:

> "4. The confusion under which the bar appears to labor is demonstrated by its concession that some review is appropriate and its simultaneous assertion that its payments are a matter of grace. In other words, the bar can do whatever is wishes, but that decisions is in some manner 'reviewable'. If the bar has complete discretion and that discretion is limitless, what is there for this or any court to review? Moreover, what, if anything, can be reviewed if there is no record upon which to base review?"

"In 1927, the Legislature adopted the State Bar Act (Bus. & Prof. Code §6000 et seq.) establishing "'what is known as an "integrated" bar, i.e., an organization of members of the legal profession of the state with **a large measure of self-government**. . . We have described the bar as 'a **public corporation** created as an **administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys**.' (Citation)."[16]

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"5. Note, too, that ordinarily review by administrative mandate is based only on the administrative record. (Citations). Here, there is no 'administrative record' from which a meaningful review could be made."

Chief Justice Lucas later wrote at page 535:

"We will conclude that the procedures followed by the bar are insufficient because they fail to provide a record upon which judicial review may be had and deny due process and that the bar therefore must formulate new rules. We will also conclude that decisions relating to applications for reimbursement for the CSF are reviewable by a writ of mandamus heard in the first instance in the superior court. . . ."

Contrary to the above it is clear that the Bar provides even less of a record and its discretion is even more "limitless" with complaints of misconduct and appeals to the CGP. The Bar still does "whatever it wishes". Ironically, like Saleeby, the denial of petitioner's verified accusation was done by the same Chief Justice Lucas. Also ironic is that petitioner also filed an application with the Bar's CSF regarding this same misconduct committed by Greene and Belli, which was denied (twice) because the CSF (the Bar) wrongly claimed (twice) that Greene and Belli were not disciplined! Not only is this another example of the Bar doing "whatever it wishes", it also is absolutely false that Greene and Belli were not disciplined. (See A.80).

[16]Again as stated above in Walker, prior to the passage of the 1927 Bar Act, disciplinary proceedings against attorneys could only be filed in the courts. Then in Emslie v. State Bar, 520 P.2d 991, 999 (Cal. 1974) the CSC stated:

"'The State Bar Act is designed to provide a procedure whereby those attorneys at law who prove recreant to their trust may be removed from the ranks of the profession. The public, as well as the legal profession and the courts must be protected from those who do not measure up to their responsibilities.

The Bar may be an **"administrative arm"** of the CSC, but the last decade has clearly shown it to be an arm seldom extended to protect the people of the State of California, and in fact, an arm that is broken. For example, see the inexplicable improper favored treatment attorney Marvin Mitchelson received from both the Bar and CSC, referenced in the instant **VA at A.17, ftnt. 9**. Another example is the August 27, 1994 Report of the Discipline Evaluation Committed to the Board of Governors, State Bar of California (commonly knows as the ALARCON REPORT) which states a page 16 (see also A.84), under the heading **"THE DISCIPLINE CRISIS: THE WAY WE WERE"**: "In the ten-year period ending in 1983, California's attorney population doubled, increasing form approximately 39,000 to more than 89,000. (ftnt. omtd). This soaring number of the practicing lawyers and the corresponding doubling of misconduct complaints and inquiries quickly outstripped the State Bar Discipline system's ability to deal with them in a timely and effective way. The general public and the California Legislature did not become aware of the dimensions of the problem until the San Francisco Examiner newspaper published a series of articles in **1985** that criticized the system as **'secretive, slow and lenient,'** (ftnt. omtd.) **and questioned whether a professional association of lawyers could police itself.** [P] After examining more than 20,000 pages of records, conducting more than 1,000 interviews and surveying nearly 400 lawyers and appellate judges over an eight-month period, the San Francisco Examiner revealed the following facts

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> Government largely depends upon the stability of the courts and, to a considerable extent, upon the integrity of the members of the legal profession . . . [P] The State Bar is empowered by the Legislature to act in place and stead of the board of governors in the determination of disciplinary proceedings . . ."

about the State Bar discipline system: There was a backlog of more than 4,000 unresolved complaints. It found that **only 11 lawyers were disbarred in a year when more than 9,000 complaints were received.** It disclosed that dozens of lawyers who were **convicted felons, or who were accused of egregious, unethical conduct were allowed to continue to practice law.** The reporters asserted that the bulk of complaints from aggrieved clients were **rejected with little or no investigation and were never made public.**(ftnt. omtd.) In a letter to the editor of the San Francisco Examiner, dated **March 18, 1985**, the communications director of the State Bar **did not refute the general findings** of the investigative reporters. **Instead, he alleged that the State Bar had actually pinpointed the problems and was working on solutions.**(ftnt. omtd.) In **1987**, however, newly-appointed State Bar Discipline Monitor Robert C. Fellmeth described the State Bar's discipline system as still **'a disaster'**. (ftnt. omtd.)"

The ALARCON REPORT then goes on to list numerous serious problems that Prof. Fellmeth documented his **"disaster"** conclusion with **"in his June 1, 1987 initial assessment report"**. Disaster - this is the condition the Bar was in right after Chief Justice Lucas wrote Saleeby. (See also A.12, **"HISTORY OF NEGLECT BY THE BAR"** and A.52, **"THE BAR'S CONDUCT"**).

More alarming is that 4-years later when his term as **"Discipline Monitor"** terminated, Prof. Fellemth had the same complaints, and more, about the condition of the Bar, stating that attorney misconduct in California was in a **"state of crisis"** and that **"The level of attorney dishonesty in representations to the court, in promises to clients [and in] dealings with adverse counsel . . . is embarrassing."** (September 21, 1991 LA Times, p. A25 article State Bar Steps Up Disciplining of Lawyers, by Philip Hager; see A.18, ftnt. 10). In fact, in his September 20, 1991 Final Report of the State

Bar Discipline Monitor (condensed edition) Prof. Fellmeth came to the **same conclusion** that the San Francisco Examiner reporters came to, above: **that the Bar could not police itself.** (See A.13, ftnt. 8). There Prof. Fellmeth stated: "We have some doubt that these kinds of reforms can be accomplished given the **regrettable structure of the Bar governance**; that is, a system where the state agency regulating the profession in the interests of the larger body politic consists largely of members of the profession selected by the profession. **Political reality makes it difficult** for the Bar's governors or its electorate (here, attorneys electing the Board of Governors) to **burden themselves substantially for the benefit of a larger population or purpose. . . . The State Bar is a long way from assuring acceptable attorneys for the public, particularly in terms of everyday personal honesty (short of financial theft) and competence.** . . . Many of the measures needed to address these problems do not rest within the jurisdiction of the discipline system itself-but they burden that system, and undermine its purpose." (p. 19).

"The State Bar must understand that the disrepute of what should be a proud profession **is not the product of media bias, and is not curable through public relations campaigns**-such as the Bar periodically suggests. . . . [P] **The State Bar, despite its acknowledged progress and new sensitivity, has yet to face up to the magnitude of its problem.**" (p. 22).

Even more alarming, is that the ALARCON REPORT itself is nothing more than a self-serving public relations campaign, demonstrated by its misleading **"MISSION STATEMENT"**, which reads: "The mission of the Discipline Evaluation Committee [Alarcon Committee] is to report to the Board of Governors **on the cost-effectiveness of the current operations and provide recommendations regarding budgets for these operations in the future.** It is also the

mission of the Discipline Evaluation Committee to review the fairness of the system and to make recommendations to ensure consumer protection and fair process for attorneys." (p. 3).

By placing **"cost-effectiveness"** and **"budgets"** in the 1st sentence of its **"MISSION STATEMENT"**, it is clear that neither this committee, nor its report, take the issue of attorney misconduct and discipline serious. Clearly it has not even identified attorney misconduct and discipline as the **"disaster"** and **"crisis"** they indisputably are.

Moreover, the 2nd sentence makes it clear that the committee actually, was not asked to i n v e s - t i g a t e t h e p r o b l e m s o f misconduct/discipline. Those two (2) words are conspicuously absent. This conclusion is further borne out by the following facts. First, is the misleading heading mentioned above entitled **"THE DISCIPLINE CRISIS: THE WAY WE WERE"** (p. 16). Were? Clearly this heading and the statements set forth under it, are intended to mislead one to the false conclusion that attorney misconduct/discipline problems have largely been solved - just like the misleading March 18, 1985 letter from the Bar's communication director, above. Second, the report fails to mention Prof. Fellmeth's final report, except a single reference, which is tucked away in a footnote (no. 10, p. 17), that misleadingly appears among a long list of **"problems"** attributed to his **"initial assessment report released June 1, 1987"**. Again, Prof. Fellmeth stated in connection with the release of his 1991 **"Final Report"** that attorney misconduct in California was in a **"state of crisis"**. Third, the report incredibly states **"We have found no evidence that clients are treated unfairly"** (at 10); but then directly makes the following amazing statements: "The present system, however, has **the appearance of being biased in favor of attorneys** in the eyes of persons who complain about unprofessional

conduct. **Persons who seek review before the Complainant's Grievance Panel** of a determination that formal disciplinary proceedings should not be initiated **are doomed to disappointment in approximately 99% of their appeals."**

That statistic is shocking. **99% of appeals doomed?** (See A.85). This is not a system that affords an appeal, affords provides due process. **Appearance of being biased?** Clearly this system is stacked, a closed shop and a lock out of the complaining party - clients - the people of the State of California. And recall above, how the standard CGP denial letter (A.61) concludes:

> **"Because the Panel considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision."**

99% of appeals **doomed** to failure! Yet the Alarcon Commission/ Report **"found no evidence that clients are treated unfairly."** The Alarcon Commission/Report, simply is not credibile. (See A.86, ftnt.15). But there is more. At page 54-55 the ALARCON REPORT states:

**"Under the present system, disbarment is relatively rare**, and it is meted out only for the most egregious misconduct . . . Yet under the current system, **a disbarred attorney can apply for reinstatement after three (3) years**, and resources must then be expended considering such applications. When a successful, **disbarred attorneys are given another chance to victimize unsuspecting clients. If the public were aware of the fact that disbarment does not really mean disbarment, it would question the seriousness of the State Bar's resolve to cleanse the legal profession** of the relatively few attorneys whose misconduct casts all attorneys in a bad light. * * * [P] . . . an attorney should be eligible for permanent disbarment where he has engaged in particularly reprehensible misconduct, e.g., embezzlement of client funds, **perjury**, suborning perjury, **knowingly making false statement to the court with intent to deceive**, and **using his**

**position as a lawyer to commit fraud on his clients or the public."**

Finally, the most incredible statements from the Alarcon Committee/Report: **"There is a troubling lack of consensus among bar discipline staff as to who is in charge of the discipline system** as a whole. Interviews held with management staff in the State Bar Court and others revealed that there were many answers to the **question, "Who is in charge of the State Bar discipline system?"** , the most prevailing answer being **"no one."** (Recommendation No. 2; Discussion, point 6, at p. 53).[17] **". . . It**

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[17]This same conclusion was reached by Mr. David Guay, Special Investigator in the Office of Investigation of the State Bar of California, in his article The Undisciplined System - State Bar 'Reforms' Need Reforming, which appeared in the December 28, 1994 LA Daily Journal at p. 2. There Mr. Guay states:

> "Yet again, the State Bar attorney discipline system is slated for major reform and organization. In 1986, after many years of criticism by just about everyone who dealt with the State Bar regarding complaints about attorney misconduct, the system was completely overhauled by the Legislature. The finished product . . . greatly increased the State Bar's revenue. There also was a massive increase in the number of complaints about attorneys and a corresponding increase in . . . discipline staff and equipment. Despite improvements in many areas, the results of the 1987 reform failed to meet expectations. Once again there was an outcry of complaints by consumers, attorneys and the legal profession in general. In December 1993, the president of the State Bar responded. She established a blue-ribbon panel to take an in-depth look at the current discipline system. . . . designated the Discipline Evaluation Committee [the Alarcon Committee/Report, who's] . . . mission was to evaluate the structure, efficiency, fairness and cost of the State Bar's discipline operation. After an exhaustive study, . . . [P] Unfortunately, there was one area the committee did not investigate and report on. That was the effectiveness, performance and leadership of the senior executives in charge of the State Bar discipline system. Except for the person holding the position of chief trial counsel, the

**is unconscionable that the discipline system has gotten so far out of control** with too much staff, lack of fiscal oversight--the most glaring examples being in the area of travel--and no expectation that the system operate efficiently or cooperatively. . . ." (Further discussion under point 6, p. 53).

Clearly the State Bar is not only a broken, but a twisted and deformed arm, a **"disaster"**, in a **"state of crisis"**, **"out of control"**, with **"no one"** in charge.[18] A disgrace to the **"RULE OF LAW"**. Equally clear is that the this Bar has gotten that way - only because the CSC has allowed it to. The CSC's failure here, to comply with Bus. & Prof. Code §§ 6109 et. seq., and its own dictates in Saleeby, is not only a denial of due process, but it is clear that it is, and has been for quite sometime - no process at all. Recall that there are no reported cases that the CSC has ever ordered an accused attorney to appear, no reported cases where the CSC granted a **VA**, and the CSC claims it **"keeps no statistics"** on **VAs**. Simply put, this is obstruction of justice of the highest order.

Our founding fathers wrote the Constitution to limit the power of government; to prevent the

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same people have been in charge for over 10 years--some considerably longer. They are directly accountable to no one. . . . [P] As a State Bar investigator for over six years, I have had the opportunity to observe and assess the leadership skills of the discipline system's senior executives. It is **my impression** that **they couldn't lead a 3-year-oldto the toilet**. Had the current discipline system's senior executives been in charge of the Titanic when it struck the iceberg, they would have immediately informed the Board of Governors by radio that the ship was going to be delayed because it had stopped to take on ice. Then, as it began to sink they would have asked each other, '**Where in the hell is all this water coming from**?'"

[18]This is another way of stating - the "RULE OF LAW" has collapsed in the State of California. See ftnt. 16, above.

government from taking arbitrary action depriving the people of their rights. The founding fathers also created this Court to remedy violations of those rights by the government. This Court must grant this petition if our Constitution and the law is to have any meaning.

## ISSUE II

**Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct - in total disregard of a clear conflict of interest confronting the California Supreme Court -a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?**

Petitioner's **VA** pointed out to the CSC that it must recuse itself from presiding over the **VA** because it faced a substantial conflict of interest. (A.19). That conflict concerned: the CSC ignoring its duty to take mandatory judicial notice pursuant to Cal. Evidence Code §451(c) of the violation of Rule 5-102[19], when the underlying legal malpractice case of Ornelas v. Greene, Belli et al., was petitioned to the CSC (this is the same **"violation"** that the Bar concluded Greene and Belli committed, see A.30); and the CSC ignoring extreme misconduct committed by the trial judge and appellate

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[19]As set forth above, Cal. Evidence Code sec. 451(c) provides "Judicial notice **shall** be taken of . . . [the] Rules of Professional Conduct . . ." Day v. Rosenthal, 217 P.2d 89, 102 (Cal.App.Ct. 1985) affirms the above and states that the Rules of Professional Conduct are "conclusive" regarding the duties of the attorney.

court.[20] That conflict further concerned: petitioner then writing the CSC on September 9, 1992 a letter entitled **"BLACK ROBE CRIME - A COVER-UP"** (A.104 and A.90, ftnt. 18), informing the CSC that it had shown contempt for the law by not granting the civil malpractice petition to it and that if the CSC did not rectify the matter, petitioner would bring suit against the CSC justices in federal court; petitioner then brought that suit.[21] The CSC though, just like

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[20]See A.105, ISSUE I on the civil malpractice case Ornelas V. Greene/Belli, S026070 petition to the CSC. The trial judge's misconduct was so great that it supplanted the issues of Greene and Belli failing to disclose the conflict of interest, and became ISSUE I on appeal. (See A.9 ftnt. 4, A.19, ftnt 11 and A.77, ftnts. 10 and 11). Those issues were ignored by the appellate court. (See A.106 and A.20, ftnt. 12). Petitioner also filed a complaint against the trial judge with the Cal. Commission on Judicial Performance, which eventually set a disciplinary hearing; but rather than face it the judge resigned from the bench. Because his misconduct was so egregious and his record was so bad, petitioner filed a Bar complaint against now attorney and ex-judge Henry P. Nelson. Like the instant matter, the Bar repeatedly ignored the judge's misconduct and arbitrarily refused to take appropriate action. Petitioner thus was compelled to file on September 13, 1994 a VA against attorney and ex-judge Henry P. Nelson, S042217. Like here though, the CSC ignored Bus. & Prof. Code sec. 6109 and the matter remains pending. See ftnt. 14, below.

[21]See A.104 and A.98, the order of dismissal of the federal complaint. There the CSC justices, as well as the three (3) involved appellate justices, were represented by separate units of the Cal. attorney general's office. Petitioner raised, both in opposition papers and at a hearing, on the motion to dismiss, that the attorney general had a "conflict of interest", as that office is counsel for the California Commission on Judicial Performance, when a judge is prosecuted for misconduct. Both the attorney general and the federal judge ignored that conflict, despite that at that stage of the proceedings all allegations are deemed "true" (see "Facts", at A.99), thus the attorney general should have been investigating, and possibly prosecuting, those judges, instead of representing them. At first blush this might for some seem incredible that the "RULE OF LAW" could so easily be disregarded. However if one reads the articles shocking articles Judges Can't Judge Themselves - Council on Judicial Performance is Rigged to Protect Judiciary, by Peter G. Keane (Chief attorney of San Francisco pubic defender's office, member State Bar Board of Governors

with the VA itself, simply ignored the conflict and denied the petition.[22] As shown below, the

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and adjunct professor at Hastings College of LAw and Golden Gate University Law School) that appeared in the December 17, 1993 LA Daily Journal at p.6 (see A.24,15) and Judges Flout Law on Closed Disciplinary Hearings, Lungren Says, by Henry Weinstein that appeared in the June 9, 1994 LA Times at p.A3, one clearly sees that this problem actually is quite pervasive. The later article reports that Attorney General Lungren wrote a June 7, 1994 letter to the Cal. State Senate stating that judges charged with misconduct have avoided public hearings after they "sought and received some form of secret writ relief from other courts of this state" and "This complete frustration " of the constitutional provisions for open hearings raises "troubling questions regarding the functioning of California's judicial disciplinary procedures."

How pervasive? Petitioner wrote Attorney General Lungren certified letters on June 13, 1993, July 9, 1993, June 16 & 24, 1994, July8, 1994, November 28, 1994, december 14 & 28, 1994, January 4, 13 & 20, 1995 providing him the information in this VA, and much much more and requesting that his office investigate the Bar and Commission for incompetence and obstruction of justice. The only letter he replied to was the July 9, 1993, with his pitiful July 16, 1993 (see A.5, ftnt. 3); there has been no investigation of the Bar or Commission. Petitioner had to become a "private attorney general". The "RULE OF LAW" has collapsed in California.

[22]Because the CSC ignored Bus. & Prof. Code sec. 6109 by not ordering the accused to answer and appear "upon receiving" the accusation and would not answer petitioner's questions (see A.92), petitioner was forced to file a complaint against Chief Justice Lucas with the Cal. Commission on Judicial Performance. Petitioner also raised two other unrelated matters: 1-Lucas participating in the case Amwest Surety Ins. Co. v. Wilson, S037405 (hearing granted 2-24-94, waitng date for argument; and 2-Lucas' "trips". Both of those matter received substantial unfavorable comment against the chief justice. See A.23, ftnt. 14. and further articles concerning the Amwest conflict: Deukmejian to Represent Insurer Before High Court - Five of Seven Justices to Hear Case Were Appointed by Ex-Governor, by Thomas Mulligan, front page February 1, 1994 LA Times; Appearances Count, by Thomas Dressler, February 2, 1994 LA Daily Journal p. 3; Deukmejian Cashes In - Appearance Before Own Appointees Looks Improper, by Thomas Elias, April 20, 1994 p. 6; and Retired Justice Kaus Asks Court: Reject Deukmejian Amicus Brief, by Philip Carrizosa, April 22, 1993 p. 9. Petitioner pointed out to the Comm. that its 5-member judge majority, could not preside over this complaint because, they were not only appointed to the Comm. by the CSC (Chief Justice Lucas was thus their boss), but regarding

CSC's failure to address that conflict was another clear **"evasion"** of its duty to follow the law and thus another denial of the due process. It also is further clear evidence that the **"RULE OF LAW"** has collapsed in California.

Again, the CSC had a duty under Evidence Code §451(c) to take mandatory judicial notice of attorneys Greene's and Belli's **"violation"** of Rule 5-102, representing conflicting interests. The CSC also had that duty as the final arbitrator of attorney misconduct matters. Furthermore, the California Code of Judicial Conduct (1990), Canon 1, provides: **"A judge should uphold the integrity and independence of the judiciary"**; and Canon 3 provides: **"A judge should perform the duties of judicial office impartially and diligently"**; and more, particularly Canon 3 D - Disciplinary Responsibilities, states:

> **"A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."**[23]

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Amwest, ex-governor Deukmajian had appointed them to the bench. Petitioner's complaint not only then presented them with a conflict situation, but an incestuous conflict situation. The Comm. simply ignored its conflict, as well as the conflicts of Chief Justice Lucas presented in petitioner's complaint.

[23]The CSC was clearly "aware" of the misconduct committed by Greene and Belli. It not only twice (1-legal malpractice petition to it; and 2-the instant VA it summarily denied) failed to take or initiate appropriate measures on its own, but ignored the misconduct when brought to it. This case however is not unique. See G. Dennis Adams, Judge of Superior Court v. Commission on Judicial Performance, S037475, P.2d (Cal. 1994), where the CSC finally took action against the miscreant Judge Adams for receiving bribes/pay-offs from attorneys that had cases before the judge. Beyond stating in extreme detail the facts of those pay-offs and the names of the involved influential attorneys, the CSC says nothing about condemning those attorneys or ordering the Bar to investigate the matter. (See also Marvin Mitchelson, A.17, ftnt. 9). Petitioner had to report those attorneys to Bar President Donald Fischbach; that matter is

The law is clear that by not recusing itself, the CSC and Chief Justice Lucas in particular, denied petitioner and the people of the State of California their constitutional right to due process of law. In Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986)[24] Chief Justice Burger wrote the opinion of the Court, which begins: "The question presented **is whether the Due Process Clause of the Fourteenth Amendment was violated when a justice of the Alabama Supreme Court declined to recuse himself** from participation in that court's consideration of this case. (page 815).
Chief Justice Burger continued at page 821: "The record in this case presents more than mere allegations of bias and prejudice, however. Appellant also presses a claim that Justice Embry had a more direct stake in the outcome of this case. In Tumey, while recognizing that the Constitution does not reach every issue of judicial qualification, the court concluded that '**it certainly violates the Fourteenth Amendment. . . to subject [a person's] liberty or property**

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currently pending. See also ftnts. 21 and 22, above.

[24]Aetna concerned Alabama Supreme Court Justice Embry casting the deciding vote in a bad faith insurance case opinion that **he wrote** which made "new law" and affirmed a $3.5 million punitive damage judgment against Aetna. Later learning that Embry himself had earlier filed two bad faith cases seeking punitive damages against insurance companies (pending when he wrote his Lavoie opinion), Aetna filed an application for rehearing and two motions in the Alabama Supreme Court; one motion challenged Embry's participation in the case, the other his participation in the rehearing. The Court unanimously denied both recusal motions and with a 5/4 decision a rehearing. Aetna filed a 2nd application for rehearing, after obtaining a copy of a transcript of Embry's deposition taken in one of the his bad faith cases, which demonstrated his predisposition against insurance companies; that application was also denied. Aetna then petitioned the U.S. Supreme Court; while pending Embry settled one of his cases for $30,000 and the other settled earlier for an undisclosed amount.

to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in the case.' 273 U.S. at 523, 47 S.Ct., at 441. [P] More than 30 years ago Justice Black, speaking for the Court, reached a similar conclusion and recognized that under the Due Process Clause no judge 'can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome.' In re Murchinson, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). He went on to acknowledge that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' Ibid. . . . [P] We conclude that Justice Embry's participation in this case violated appellant's due process rights as explicated in Tumey, Murchison, and Ward. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but whether sitting on the case then before the Supreme Court of Alabama '"would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance, nice, clear and true."' Ward, 409 U.S., at 60, 93 S.Ct., at 83 (quoting Tumey v. Ohio, supra, 273 U.S., at 532, 47 S.Ct., at 444). The Due Process Clause, 'may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties. But to perform its high function in the best way, "justice must satisfy the appearance of justice."' (Citations). (at 825).

Like Alabama Supreme Court Justice Embry in Aetna, above, Chief Justice Lucas here has "an interest in the outcome". Here, when he had a mandatory statutory duty, and further duties on several other levels, to condemn the blatant and egregious misconduct committed by attorneys Greene and Belli - he did nothing - but he then was proven wrong, by the Bar concluding Greene and Belli "violated" Rule 5-102. Again, that

**"violation"** was the gravamen of the legal malpractice case against Greene and Belli! (See A.105, A.77, ftnt. 11, and A.71, ftnt. 5). But Chief Justice Lucas ignored that misconduct, as well as the misconduct of the trial judge and appellate court. And when given the opportunity to correct his mistake, he only compounded it - first, by failing to recuse himself, and second, by summarily denying the **VA** in violation of Bus. & Prof. Code § 6109.

Clearly, here Chief Justice Lucas has twice given in to temptation, which has **"lead him** [twice] **not to hold the balance, nice clear and true"**, otherwise he would have recused himself or filed an answer to that request, and he would have followed Bus. & Prof Code §6109 and **"upon receiving"** the instant **VA** he would have ordered Greene and Belli **"to appear and answer it."**

What has occurred here in no way has done justice or **"satisfies the appearance of justice."** It has done just the opposite. The opposite of what the law and duties compelled the CSC to do. Here the CSC has denied both petitioner and the people of the State of California due process of law and shown contempt for the **"RULE OF LAW"**.

In Liljeberg v. Health Services Corp., 486 U.S. 847, 861 (1988)[25] Justice Stevens wrote in

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[25]Liljiberg involved Federal District Court Judge Collins failing to inform the parties in a case before him, that he was on the board of a university involved in a land deal that would be affected that litigation; he further failed to recuse himself from presiding over that case, as required by the Federal Judicial Code, 28 U.S.C. section 455(a). The Supreme Court affirmed that Judge Collins in fact had a conflict of interest, that he should have recused himself, and the court of appeal decision vacating Judge Collins' judgement, that had favored the side connected with the university. Stating that the very purpose of section 455(a) was to promote confidence in the judiciary by avoiding even the appearance of impropriety and therefore it was "critically important" to identify the facts an objective observer might question Judge Collins' impartiality, Justice Stevens wrote: "First, it is remarkable that the judge, who had regularly attended the meetings of the Board of Trustees since 1977, completely forgot about the

a majority opinion Justice Stevens wrote: "In this case both the District Court [remanded to another trial judge after a first appeal] and the Courts of Appeal [second appeal] found an ample basis in the record for concluding that **an objective observer would have questioned Judge Collins' impartiality**. Accordingly, even though his failure to disqualify himself was the product of a temporary lapse of memory, it was nonetheless a plain violation of the terms of the statute. . . .

* * *

"We conclude that in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate **to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process**. We must continuously bear in mind that '**to perform its high function in the best way "justice must satisfy the appearance of justice."**' In re Murchison, 349 U.S. 133 (1955) (citation omitted)." (page 866). . . . The problem, however, is that people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.12 (864).

"12. As we held in Aetna Life Ins. Co. Lavoie, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986), **this concern has constitutional dimensions**. . . ."

Well § 455(a) governs California appellate justices. Kaufman v. Court of Appeal, 647 P.2d

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University's interest in having a hospital constructed on it property in Kenner. . . ." (865). Here it is "remarkable" that the CSC ignored the misconduct of Greene and Belli on the first occasion of the civil malpractice case (see A.105; it is criminal when it ignored it the second time in this VA.

1081 (Cal.App.Ct. 1982).[26] Section § 455(a) governed the CSC and Chief Justice Lucas here regarding petitioner's request that they recuse themselves. But just like Bus. & Prof. Code § 6109, above, the CSC ignored has ignored this law also. The CSC can not claim that its recusal was prevented by the judicially created **"rule of necessity"**, because it does not exist in California. Mosk v. Superior Court, 601 P.2d 1030 (Cal. 1979).

It is indisputable that **"an objective observer would question [the] impartiality"** of the CSC here, and in particular Chief Justice Lucas. If not question much more. The issue of the denial of petitioner's and the people's due process here - is clear. The risk of injustice here, is no longer a risk - injustice has occurred, repeatedly, and it has been compounded several times. The public's confidence in the judicial process, as stated above by former Chief Justice Burger is already down, with this matter the CSC has kicked it down even lower. (See A.23, ftnt. 14 and A.53, ftnt. 9). The judicial misconduct here has denied petitioner and the people of the State of California due process of law in - **"constitutional dimensions."**

This Court must grant this petition and state so. This Court must restore the **"RULE OF LAW"** in Califronia.

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[26] After holding that sec. 455(a) was "the California accepted rule" and then reaffirming it, the Kaufman Court stated at 1085:

> "Further, in this court the sole question would be: 'Because of his bias, did the appellate proceeding wherein a justice participated become illegally and prejudicially unfair?'"

That is the question here also. The answer is an unequivocal "yes";and grossly illegal and prejudicially unfair here, by - "constitutional dimensions".

## CONCLUSION

As established above it is clear that the California State Bar and the California Supreme Court have **"fallen down."** They have forsaken and trashed, precisely the ethics, rules and law, they purport to stand for and are supposed to embody. They have demonstrated a course of conduct antithetical to their purpose and duty.

The **"RULE OF LAW"** has collapsed in the State of California. This case shows the dark side of the legal profession - greed and self-dealing. What has occurred here is criminal. Attorney-author Sol Linowitz has called it THE BETRAYED PROFESSION: Lawyering At The End of the Twentieth Century, (1994).

But as former Chief Justice Burger stated above, this is occurring across our nation, as judges and lawyers in every state betray the profession and institution of the law. This Court must put a stop to the demise of the **"RULE OF LAW"**, or it surely will bring America itself down. Justice Brandies stated in Olmstead v. United States, 277 U.S. 438 (1928):

> **"Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."**

This petition provides this Court the opportunity and vehicle to stop the demise and to once again establish honesty and integrity to the legal profession and establish once again the real **"RULE OF LAW."** Otherwise, the writing is on the wall.

Dated: April 14. 1995

GARY L. ZERMAN, Esq.,
Petitioner, Pro se

## APPENDIX

Verified Accusation of Attorney
Gary L. Zerman against Attorneys
R. Browne Greene and Melvin M. Belli . . A.2

Bar's March 10, 1993 **"violation"** letter A.30

Petitioner's March 25, 1993 letter-
appeal to Bar's CGP . . . . . A.32

Bar's (CGP's) December 2, 1993
denial-no further action letter . . . . A.61

Petitioner's document
"**FURTHER EVIDENCE OF FRAUD**" . . . . . A.63

Cal. Supreme Court's summary denial
of Verified Accusation against attys.
Greene and Belli, S037066 . . . . . A.91

Petitioner's June 6, 1994 letter to
Cal. Supreme Court . . . . . A.92

Order of Dismissal, Ornelas v. Lucas,
USDC, Case No. CV 92 7246 RG . . . . . A.98

Cal. Supreme Court's summary denial of
petition of Ornelas v. Greene/Belli,
C596304, Appeal B052519, pet. S026070. . A.104

Ornelas v. Greene/Belli, S026070,
petition to Cal. Supreme Court . . . . . A.105

Petitioner's September 9, 1992 letter
**"BLACK ROBE CRIME - A COVER-UP"** to
Cal. Supreme Court . . . . . A.108

**IN THE SUPREME COURT**
**OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE
VERIFIED ACCUSATION OF
ATTORNEY GARY L. ZERMAN
AGAINST Case No. _____

ATTORNEYS
R. BROWNE GREENE
AND
MELVIN M. BELLI

TO CHIEF JUSTICE MALCOLM LUCAS AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Attorney Gary L. Zerman (hereafter **CW** - complaining witness), files this verified accusation of **serious misconduct** against attorney **R. BROWNE GREENE** and attorney **MELVIN M. BELLI** (hereafter **GREENE, BELLI**, or collectively **attorneys**).

**JURISDICTION**

This verified accusation is filed pursuant to California Business & Professions Code, section 6108 and In Re Walker (1948) 32 Cal.2d 488; 196 P 2d. 882.[1] (Also see California Evidence Code, section 451(c) and Day v. Rosenthal (1985) 170 Cal.App.3d 1125, 1147, which require mandatory judicial notice be taken

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[1]How ironic. BELLI just happens to be named as one of the attorneys being complained about to the Bar in Walker, at 490; as early as 1948 he was already generating complaints and even then the Bar was looking the other way. See exhibit 2 - CW's 3-25-93 letter to the Bar, at p. 13, pt. 5, for reference to a long history of complaints about him. Complaints about GREENE's conduct have also been before the courts. See Voorhies v. Greene (1980) 139 Cal.App.3d 989; 189 Cal.Rptr. 132 and Volkswagen v. Williams (1986) 180 Cal.App.3d 1244; 226 Cal.Rptr. 306. One of the items that GREENE was successful in taking from Voorhies, was the Ornelas v. Ford case; although GREENE was not so successful when that case was tried. (See ftnt. 4, below and exhibit 5a).

of violations of the Rules of Professional Conduct).

On March 28, 1991, **CW** filed a complaint with the California State Bar (hereafter Bar) against **BELLI** making several charges of serious misconduct. (On or about February 20, 1992 the Bar advised **CW** it was expanding the complaint to include **GREENE**). Thereafter on several occasions, at the request of the Bar, and on his own, **CW** furnished the Bar with numerous documents and further information supporting the charges made in the complaint.[2]

On March 10, 1993 the Bar sent **CW** a letter (copy attached as exhibit 1) advising that it had:

> "completed its investigation . . . regarding your complaint against Melvin M. Belli and R. Browne Greene. . . . and **we conclude that there was a violation of former rule 5-102(B) of the Rules of Professional Conduct. Given the circumstances** in which the misconduct occurred, and considering the overall disciplinary record of each attorney, your complaint would not likely result in suspension or revocation of each attorney's license to practice law. We have therefore issue a Warning Letter to the attorneys, cautioning them to avoid such conduct in the future. Should other complaints **indicate that this case was not an exceptional circumstance,** the matter may be reviewed for further action."

On March 25, 1993 **CW** sent a letter (attached as exhibit 2 and incorporated here as set forth in its entirety) to the Bar - the Complainant's Grievance Panel (hereafter CGP)

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[2]For a list, see exhibit 2 - CW's 3-25-93 letter to the Bar, at p. 4.

advising that:

> ". . . I am **totally dissatisfied** with and **appalled** by, the Bar's . . . decision to discipline attorneys Greene and Belli here with, **a mere scolding**, by way of a Warning Letter . . . this action by the Bar is not only totally inappropriate, but it is a **sham**. [P] By way of this letter I personally, and on behalf of Ms. Ornelas and Ms. Castro and the public, am requesting that the Bar try again. . . [P] . . . the Bar's investigation of the misconduct committed by attorneys Greene and Belli in these matters is not only puzzling and incompetent, but it is a **fraud** upon the public. . . [P] Just what does [the Bar] mean by **"Given the circumstances in which the misconduct occurred"** and that **"this case was not an exceptional circumstance?"** [Could the Bar] please explain those comments?"[3]

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[3]That 3-25-93 letter was also sent to Ms. Wachter (author of the Bar's 3-10-93 letter - exhibit 1) and Mr. Harvey Saferstein (Bar's then president). Thereafter CW sent further letters to higher level Bar personnel again requesting an explanation of those comments: on 4-12-93 to Saferstein; on 5-10 and 6-20-93 to Robert Heflin (Bar's Chief Counsel); on 7-30-93 to Bar's Client Security Fund; on 9-14-93 to Ms. Lynne Geminder (Director Bar's Complaint & Audit Review Department); and on 10-22-93 letter to Ms. Margaret Morrow (Bar's current president). None have answered the request that those comments be explained. Maybe this Court can do that here?

Others have also written to the Bar regarding its improper handling of this matter:

Senator Presley wrote his 4-20-93 letter to the State Bar's Chief Trial Counsel, Robert Heflin that informed him that he had received a copy of CW's 3-25-93 letter to the Bar, which he found made some ". . . very specific, well-organized allegations regarding the manner in which the Bar has handled complaints against attorneys R. Browne Greene, Melvin M. Belli and Judge Henry P. Nelson. Mr. Zerman is of the opinion that the Bar is lax in disciplining

famous or influential members even when serious offenses have been committed. Both Mr. Greene and Mr. Belli are former presidents of the California Trial Lawyers Association." Senator Presley's letter concluded requesting that Mr. Heflin explain the Bar's actions.

Senator Hayden wrote his 6-23-93 letter to CW, stating "Thank you for informing me about your problem with the California State Bar Association. I am glad my staff called on your behalf and spoke to Gail Andler, Senior Legal Counselor. She informed me that your cases are in the Complainant Grievance Panel (CGP), and she is waiting for a resolution from them. [P] I have asked Ms. Andler to review your cases when she receives them and to notify me about the results of your complaints. [P] I hope a favorable resolution is found for your problem. If you need further assistance with this or any other state matter, please do not hesitate to call my office."

Senator Torres wrote his 7-1-93 letter to Robert Heflin stating "I recently received correspondence from Gary L. Zerman, an attorney with very specific, well-organized allegations regarding the manner is which the Bar has handled his complaints against Attorneys R. Browne Greene, Melvin M. Belli and Judge Henry P. Nelson. Mr. Zerman is of the opinion that the Bar is lax in disciplining famous or influential Bar members, even when serious offenses have been committed. [P] Mr. Zerman contacted me because his clients are constituents of mine. I would appreciate your review and response to his letter so I can pass the information on to Mr. Zerman."

Copies of the Senators' letters are attached as exhibit 3, collectively. Like the above comments that CW repeatedly requested the Bar to explain, the Bar also failed to reply to the letters from the Senators. Is that due to lack of concern? Or arrogance? Or simply unbridled power? Regardless of what it is called, it is clearly a demonstration that the Bar is not concerned with disciplining attorneys and protecting the public. It is also clear that is a dangerous situation. As further proof of just how great the power and unaccountability of the Bar is, see the enclosed copies of 11-2-92 and 7-26-93 letters from Governor Wilson and 7-16-93 letter from Attorney General Lungren, replying that their offices could not touch the Bar, in response to CW's letters to them that requested they investigate the Bar. (Those letters are attached also as exb. 3).

For a further example of how powerful the California Trial Lawyers Association (CTLA) is, see the LA Times 12-27-93 p.A3 article entitled "Preemptive Strike", about plans for a consumer initiative to cut lawyers fees being stopped. The article states in pertinent part:

> "... the initiative that never was is a story about the behind-the-scenes maneuvering of some of California's most powerful interests over one of the state Capitol's most contentious

issues-reform of the civil justice system. . . . [P] These interests have fueled some the Capitol's most legendary battles and deals. Here is a look at the most recent fight, waged almost entirely out of public view. [P] In the words of Browne Greene, a Los Angeles attorney and past president of the California Trial Lawyers Assn., blocking the Lawyer Accountability Act from appearing on the ballot was the organizations's finest hour. . . . [P] In September, Keene [a former Democratic State Senator and now head of California Tort Reform, the chief proponent of the initiative] wrote a confidential memo to potential supporters laying out reasons that they should back the measure. He explained that the trial lawyers, among the biggest donors to Democratic candidates, would have to spend their war chest to defeat the initiative, leaving them with less to spend electing friendly lawmakers. [P] Keene wrote that action 1994 was urgent. The California Trial Lawyers would have two allies heading the Legislature. In the Assembly, Speaker Willie Brown of San Francisco often supports trial lawyer positions and is the largest recipient of the group's money-$87,000 of the $716,000 the group gave to campaigns in 1991 and 1992. [P] In the Senate, Bill Lockyer (D-Hayward, Chairman of Judiciary Committee) is likely to replace David Roberti (D-Van Nuys) as president pro tem. Lockyer and Brown penned the Napkin Deal in 1987. Since then, Lockyer has emerged as perhaps the closest friend of the trial layers in the upper house."

Regarding GREENE's "finest hour" comment above, he earlier also commented in an article in the 6-86 issue of California Lawyer p. 96 entitled "FINAL WORD", that concerned his and CTLA's perspective on the then proposed Prop 51 (this was just shortly after GREENE had been served with the civil complaint in Case 3 - Ornelas v. Greene and Belli and when he wrote his 5-26-86 letter to CW stating, "I read with great humor the attempt at a Complaint that you did on this matter . . . would you be kind enough to inform me of the insurance carrier for your errors and omissions policy."). (See exhibit 2, "FURTHER AGGRAVATING ACTS", Attorney Greene, p. 11, pt. 1). The piece GREENE wrote was entitled "The Irresponsibility Crisis" and he stated there in part:

> "This is a matter of fairness: When several defendants are responsible for causing injury, the victim should not bear a loss simply because one of the defendants can't or won't pay his share of the damages."

On December 2, 1993 the Bar-CGP sent **CW** a letter (copy attached as exhibit 4) advising that it had:

> "**denied** your [CW's] request for further investigation of the above matter [93 CR 10503/04; 91 0 2431 & 91 0 6361, re Melvin Belli and R.B. Greene"]. . . Accordingly, the State Bar of California will **take no further action** concerning your complaint. Because the Panel **considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision.**"

**GENERAL ALLEGATIONS**

**CW** here asserts:

1. that **CW**'s complaint and further letters to the Bar have set forth several specific charges of serious misconduct against attorneys **GREENE** and **BELLI**, and **CW** believes that such charges are indisputable and thereby constitute grounds for severe disciplinary action that must be taken by Bar against **GREENE** and **BELLI**, to wit: disbarment or a very, very lengthy suspension;

2. that **CW**'s complaint, and more

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* * * *

"The real crisis we face today is an irresponsibility crisis, in which technological progress is not matched by commitments to safety and consumer protection. Deregulation has contributed to the crisis by fostering a climate of indifference among some government officials and members of the nation's business community."

* * * *

"As officers of the courts, we have an ethical obligation to improve the administration of justice. In this instance our charge is clear: We must speak out, now, to protect the dignity and integrity of the justice system we have each sworn to uphold. We must work to oppose Proposition 51."

particularly **CW**'s March 25, 1993 letter, were presented to the Bar (at several levels) for the purpose of invoking the disciplinary powers of the Bar against attorneys **GREENE** and **BELLI**; and

3. that since the initial presentation of such charges and thereafter up to this day, the Bar (at several levels) has handled the complaint and the charges therein against attorneys **GREENE** and **BELLI**, in an arbitrary, incompetent, and unlawful manner by refusing to apply and follow the law, by refusing to take appropriate disciplinary action required thereunder, and by refusing to grant a hearing against attorneys **GREENE** and **BELLI**.

This Court must address the charges of serious misconduct that **CW** asserts against attorneys **GREENE** and **BELLI** and this Court must discipline attorneys **GREENE** and **BELLI**. This Court must then call for an independent investigation of the Bar - and the involved personnel who failed to perform their duty must be brought to justice and must answer for their own misconduct.

**SPECIFIC CHARGES PRESENTED**

Attorneys **GREENE** and **BELLI** committed several acts of serious misconduct which are set forth in extreme detail in **CW**'s March 25, 1993 letter to the Bar. (See exhibit 2, pgs 5-13). That misconduct includes: representing adverse/conflicting interests[4] and not

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[4]See exhibit 5 - a graphic depiction of the case. GREENE represented negligent-free passengers Maria Ornelas and Fabiola Castro along with the driver, in a single-vehicle accident personal injury case (Case 1 - Ornelas v. Ford, LASC Case No. C209950, Appeal Case No. B66611 [nonpub. opn.]). Ford's defense was that the driver operated the vehicle in a reckless manner by (among other things) taking a turn too fast and too sharp, causing the accident, thereby killing Ms. Ornelas' eight-day-old baby

Jesus and causing the horrible burn injuries to Ms. Ornelas and Ms. Castro. Ford was correct - the jury found that the driver alone caused the accident; the appellate court affirmed such. Despite express warnings GREENE ignored and never disclosed the adverse/conflicting interest to clients Ornelas and Castro, because of greed - his potential recovery from the contingency contract with the driver. (See exhibit 2, p.7, ftnt. 6, pt. THREE). GREENE presented the wrong case which caused Ms. Ornelas and Ms. Castro to lose a $2,000,000 settlement offer from Ford. (See exhibit 5a - a 12-81 AMERICAN LAWYER article entitled "WORST PERFORMANCE").

BELLI then represented the same parties (thus the same conflict) in a legal malpractice case against GREENE (Case 2 - Ornelas v Greene, OCSC Case No. 380250). BELLI ignored and never disclosed his, or GREENE's conflict, then presented the wrong case and caused Ms. Ornelas and Ms. Castro to lose a verdict of at least $2,000,000, plus an earlier $550,000 settlement offer. BELLI also took over the appeal of Ornelas v. Ford and ignored that conflict too, thereby failing to raise the correct issues on appeal. BELLI's handling of both the appeal and the malpractice case created another conflict - which of course he also ignored. (See exhibit 5b - O'Brien's Evaluator summary re Ornelas v. Greene).

CW represented Ms. Ornelas and Ms. Castro in a legal malpractice case against GREENE and BELLI (Case 3 - Ornelas v. Greene/Belli, LASC Case No. C596304, Appeal Case. No B052519 and Supreme Court Case No. S026070). The purported trial was aborted (and thus never got to the jury) by a lawless rogue judge (see ftnt. 11, below). This was despite that judge determining as a matter of law that there was a conflict between passengers Ornelas and Castro with the driver, coupled with admissions from GREENE and

disclosing such to their clients despite repeated express warnings (at p. 7, pt. 1; 10, pt. 3); attempting then to cover-up that fraud upon the clients (9, pt.4; 12, pt. 1 and 13, pt. 3); allowing their employee investigator to obtain a 10% contingency fee agreement with their clients, thereby creating further conflicts (at 8, pt. 2; at 10 pt. 2); threatening the new attorney of their clients (CW) who was prosecuting a legal malpractice case against **attorneys** for their improper representation (11, pt. 2; 12, pt. 1); disobeying trial subpoenas and then having ex parte conversations with the trial judge (11, pt. 3); and commission of perjury (13, pt. 3).

**APPROPRIATE DISCIPLINE**

The single violation of Rule 5-102 that the Bar concluded in its March 10, 1993 letter (exhibit 1) that attorneys **GREENE** and **BELLI**

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BELLI that they thought there was no conflict (see exhibit 2, p. 12, pt. 4 and p. 13, pt. 2); that conflict was affirmed by the appellate court (see ftnt. 12, below). With the conflict determined as a matter of law, it is axiomatic that GREENE and BELLI then both owed and breached mandatory legal duties under Rule 5-102 (and interpreting case law). However the trial, appellate and Supreme Court all refused to take mandatory judicial notice of those duties/breaches - thereby wrongly allowing GREENE and BELLI to escape the consequences/liability of their misconduct and the harm caused to Ms. Ornelas and Ms. Castro. Recall the Bar's 3-10-93 letter that concluded GREENE and BELLI violated Rule 5-102. (For further factual details see: exhibit 2; APR; APRSC; CW's 9-9-92 letter to Supreme Court, "OVERVIEW OF THE 3 CASES"; and exhibit 5c - 7-11-90 National Law Journal article "What Goes Around Comes Around" re Ornelas v. Greene/Belli).

committed, alone mandates that **GREENE** and **BELLI** be suspended for at least one (1) year. (See Standards for Attorney Sanctions for Professional Misconduct, 2.8; Guzzetta v. State Bar (1987) 43 Cal.3d 962, 967, 239 Cal.Rptr. 675, 676; and Maltaman v. State Bar (1987) 43 Cal.3d 924; 239 Cal.Rptr. 687. Also see exhibit 2, at p. 5, ftnt. 3).

Application of the "Standards" require:

1) consideration of the gravity of the offense - that **GREENE** and **BELLI** intentionally ignored repeated express warnings of the conflict and thereafter committed further fraud by attempting to cover-up discovery of the resultant harm caused by **attorneys** ignorance of the conflict; and

2) consideration of the gravity of the harm - that the clients of **GREENE** and **BELLI**, from the start lost the opportunity of proper legal representation, which thereafter caused them to lose the opportunity to present a proper case, the opportunity to properly evaluate settlement offers, to lose a $2,000,000 settlement offer and the loss of any and all compensation for the horrible losses and injuries they suffered.

The law is clear - ignoring the conflict was a breach of a foundational mandatory fiduciary duty and fraud.[5] The law is clear - the punishment for that single violation must be much, much greater. See Beery v. State Bar (1987) 42 Cal.3d 806 - where this Court gave a 5-year suspension to an attorney with no prior disciplinary record for a single violation of

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[5]See Ball v. Posey (1986) 176 Cal.App.3d 1209, 1214. Also see exhibit 2 - CW's 3-25-93 letter, at p. 4, "THE LAW"; plaintiffs/appellants' petition for rehearing (APR, Court of Appeal Case No. B052519) at p. 6; petition for review to Supreme Court (APRSC, Supreme Court Case No. S026070) at p. 12; and CW's 9-9-92 letter to the Supreme Court, at p. 5, "THE LAW". Attorneys GREENE and BELLI violated Rule 5-102 (and thereby also committed fraud upon their clients). The Bar in fact concluded such in its 3-10-93 letter - see exb. 1.

Rule 5-102, and stated:

> "'Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys.' (Citations.)." (at 815).

Of course there still remains the several other grave offenses committed by **GREENE** and **BELLI**, set forth in **CW**'s March 25, 1993 letter that the Bar has repeatedly refused to address. The commission of these offenses demonstrate that **GREENE** and **BELLI** have nothing but contempt for their attorney oaths and the law. Moreover, at the same time it shows that these attorneys possess a cunning ability for deception. The commission of these offenses warrant the permanent disbarment of **GREENE** and **BELLI** - if not also some jail time.[6]

The refusal by the Bar to address these offenses and to punish these **attorneys** is proof beyond doubt that the Bar is corrupt. The involved Bar personnel have wilfully failed to perform their duty and thus have violated the law. (See Gov. Code, sec. 1222). The Bar must be investigated and the involved individuals punished.**HISTORY OF NEGLECT BY THE BAR**

After conducting only a little research about the Bar's activities, one finds that it actually is no surprise that the Bar has improperly handled these complaints against

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[6]Rather than follow the law and do justice as sworn to in their attorney oaths, GREENE and BELLI repeatedly intentionally ignored the conflict thereby violating Rule 5-102, fundamental fiduciary duties and committing fraud on their clients. They then further violated the law in an attempt to escape the consequences of their misconduct, by preparing misleading documents, committing perjury, disobeying trial subpoenas and then having undisclosed ex parte communications with the trial judge - these attorneys obstructed justice. (Exhibit 2, pgs. 5-13). See People v. Martin (1982) 135 Cal.App.3d 710; 185 Cal.Rptr. 556).

these attorneys.[7] In fact, all one need do is read the LA Times September 21, 1991, page A25 article entitled **"State Bar Steps Up Disciplining of Lawyers"** (attached as exhibit 6), that reports about the Bar's Special Discipline Monitor telling that further reforms are <u>still needed</u> to quell a **"state of crisis"** in attorney misconduct in California and that the **"level of attorney dishonesty in representations to the court, in promises to clients [and in] dealings with adverse counsel . . . is embarrassing."**[8]

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[7]See exhibit 2 - CW's 3-25-93 letter to the Bar, "THE BAR'S CONDUCT", at p. 14, ftnt. 9, which lists numerous claims of reform that the Bar has promised us. For the most part these reforms have <u>never</u> been delivered, and where delivered have usually resulted in a miserable failure. (See last paragraph of ftnt. 8, below). <u>The failure of the Bar to do its duty has compelled the filing of this verified accusation</u>.

[8]The Special Discipline Monitor was Professor Robert Fellmeth, Director of the Center for Public Interest Law - University of San Diego, and his "FINAL REPORT" was dated 9-20-91. He was appointed in January 1987 to serve a four (4) year term in the post, as a result of several reform bills sponsored by Senator Robert Presley. The release of Professor Fellmeth's "FINAL REPORT" coincided with the expiration of his term. <u>Since then there has not been a further special discipline monitor</u>. In his "FINAL REPORT" (condensed version) he further stated the following:

> "In 1986, the State Bar had initiated a statewide toll-free "hotline" number . . . to facilitate consumer complaint receipt, but had not listed it in telephone books, either in the California State Government section or in any other location a consumer might logically find it. (ftnt. omitted). . . [P] In 1991, the situation is substantially different, although serious deficiencies remain. For example, the State Bar has for four years expressed its intent to publish its toll-free number at least in the state government section of the telephone directories. At present, however, the State Bar listing is still regrettably absent from most of the major telephone directories of the state-and this is true as to <u>any</u> State Bar telephone number, not merely the toll-free discipline number." (at 3).
>
> "Under the system then extant, the Bar relied upon the

"complaining witness" (CW)-that is, the person informing the Bar of a possible problem licensee-to "carry the ball" and provide evidence. However, 80% of those complaining to the State Bar by phone did not bother to send in subsequently requested written material. When this occurred, that matter was dropped. With rare exception, the Bar viewed a complaint about an attorney as a matter between the CW and the attorney who was the subject of the complaint." (ftnt. omitted). [P] Information about lawyers misconduct from attorney self-reporting (required by the State Bar Act), judges, malpractice judgments, or other potentially rich sources of information about attorney wrongdoing was not reliably gathered, and was not systematically used for pattern detection purposes." (at 5).

"Despite recent staff increases, a choking backlog has developed in CAR [Complaint Audit and Review Unit]. As of December 1989, CAR had 1,066 unscreened cases pending before it, up 505 from the previous six months. At this time, we are distressed to report that the backlog has jumped even more. The open cases before the CAR include over 2,700 cases, two-thirds of them inquiries closed by Intake, and the remaining one-third more serious cases passing through intake but closed by OI. Almost half of the closed inquiries still open within the CAR backlog are more than one year old at this point. The OI-dismissed cases are generally older. [P]... The backlog is growing, not shrinking. However, in order to enable the Panel to make considered decisions, and recognizing that it is made up of volunteer appointees who meet once a month, CGP has necessarily limited itself to consideration of a defined number of cases per month, . . . this has meant CGP consideration of 30-60 cases per meeting outside the consent calendar. [P] . . . we do not see them solving this problem." (at 9).

"The work product of the State Bar Court was inconsistent and not of the highest quality. The California Supreme Court in extraordinary frustration, openly criticized the work product of the State Bar Court in two published opinions: Maltaman v. State Bar, 43 Cal.3d 924 (1987), and Guzetta v. State Bar, 43 Cal.3d 96 (1987)." (page 14).

"In addition to its failure to meaningfully address incompetence by way of licensure barriers to entry or post-entry requirements, the Bar has not seriously disciplined

incompetence, nor has it removed the incompetent from the profession except in extreme cases. [P] The failure of the Bar to establish overall standards of personal honesty is similarly stark . . . [and] rightfully a source of embarrassment to many in the profession. [P] . . . But the problem remains, as discussed below. We are less certain here of viable solutions. However, it may well rest in . . . the basic revision of the extreme "adversary"-all is fair-ethic, particularly in civil proceeds. This last problem has created a kind of amoral atmosphere which permeates and poisons much of the profession-without reliably producing the 'truth from conflict' which is its raison d'etre. [P] We have some doubt that these kinds of reform can be accomplished given the regrettable structure of Bar governance; that is a system where the state agency regulating the profession in the interests of the lager body politic consist largely of members of the profession selected by the profession. Political reality makes it difficult for the Bar's governors or its electorate (here, attorneys electing the Board of Governors) to burden themselves substantially for the benefit of a larger population or purpose. . . The State Bar is a long way from assuring acceptable attorneys for the public, particularly in terms of everyday personal honesty . . ." (at 19).

"The Bar must search for ways to deter attorney deceit, particularly in the practice of civil law. . . Regrettably, the large city practice, where an attorney's previous abuses do not become widely known so that his or her statements are then discounted based on reputation, means that misleading behavior is not deterred by the courts adequately, and can even be rewarded by the system." [P] Part of the problem has to do with the lack of certain sanction. And part of it has to do with an adversary system gone awry. . . On the civil side, the ethic has been distorted to justify deceit on a grand and institutionalized scale. It has reached a stage where any trier of fact is going to have difficulty in ferreting out the truth from two persons bound and determined to mislead as much as possible." (at 20).

". . . we offer the unsettling experience of listening to the hotline operation . . .[as] . . . deeply troubling. It is one highly recommended for the "defenders of the profession" who deny serious and endemic abuses practiced upon the public by the legal profession. [P] The sheer force of call after call is

More recently, a January 28, 1993 LA Daily Journal page 2 article entitled **"High Court OKs Mitchelson Discipline Terms"**, shows that the Bar pays only lip service to, and still has no understanding of - its main purpose - to protect the public from attorney misconduct; the Bar continues to demonstrate an inability to even recognize, much less discipline, a renegade

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> momentous . . . The number of calls of this type to the Bar is simply overwhelming. They represent a large portion of a bout 75,00 calls to the Bar each year . . . one coming in every 80 seconds . . . [and] elicits in any listener a profound sadness. [P] The State Bar must understand that the disrepute of what should be a proud profession is not the product of media bias, and is not curable through public relations campaigns-such as the Bar periodically suggests. . . [P] The State Bar, despite its acknowledged progress and new sensitivity, has yet to face up to the magnitude of its problem." (at 21-22).

Again, recall that there has been no special discipline monitor at the Bar since Professor Fellmeth's 9-20-93 "FINAL REPORT" and few, if any, of his recommendations were taken up and implemented. Yet now a 12-21-93 LA Daily Journal p. 3 article "Bar's Discipline System Will Face Panel Review" tells about Bar President Margaret Morrow announcing her appointment of:

"an eleven member commission . . . [that] will undertake an nine-month investigation of the bar's discipline system." . . . [P] Since 1988, when bar dues were nearly doubled to revamp California's lawyer discipline system after a decade of complaints that it did not provide swift and certain punishment for dishonest attorneys, the system has been held up as a national model. [P] . . . Meanwhile, legal consumer advocates have maintained that, despite the reform, the system does not do a good enough job in swiftlypunishing unethical lawyers." . . . [P] In announcing the appointments, Morrow lauded the experience and independence of the panel's members."

The Bar's true colors however are shown, where the article states ". . . but no overt critics of the State Bar" were appointed to the commission by President Morrow. Just another PR ploy? (See exhibit 6).

attorney.[9]

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[9]In pertinent part that article states:

> "The California Supreme Court accepted an agreement Wednesday to place famed palimony attorney Marvin Mitchelson on three years of disciplinary probation with the State Bar. [P] . . . [he] is required to take and pass the California Professional Responsibility Exam, a test on legal ethics and the rules of professional conduct within one year. [P] Mitchelson, currently on trial in Los Angeles federal court on charges he understated his income taxes could not be reached for comment. But his attorney, Arthur Margolis of Los Angeles, said 'We think the disposition is a fair one.' [P] The agreement between Mitchelson and the State Bar disposes of all disciplinary charges . . . As part of the deal, Mitchelson stipulated that he failed to properly supervise the work of an associate, failed to tell two clients that he had delegated most of the work on their cases to an associate and commingled personal funds with client funds in his bank account.
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> "The bar agreed to drop charges that he mishandled client funds, filed frivolous appeals, failed to refund unearned fees and related forms of conduct. [P] Mitchelson also was accused of rape by two women in 1988. But the Los Angeles District Attorney's Office, the state attorney general's office, the county grand jury and the State Bar all declined to prosecute, saying evidence was insufficient to support their claims. [P] The court's one-paragraph order, signed by Chief Justice Lucas routinely goes along with the bar's recommendation in lawyer discipline cases. . ."

A 2-10-93 LA Times page B1 article entitled "Celebrity Lawyer Mitchelson Found Guilty of Tax Fraud -Famed Palimony attorney convicted of concealing nearly $2 million in income from 1983-86" had U.S. Atty. Terree Bowers stating:

> "This is the West Coast version of the Leona Helmsley case. . . This type of case is particularly irksome to us when you have people who are famous and wealthy, yet they engage in manipulative conduct in order to cheat on their taxes. More than 98% of the income that the IRS collected from Mitchelson since 1972 has been obtained through liens and other enforcement activities."

Where was the Bar during all those years? What was the Bar doing in

The Bar simply has no credibility. The Bar simply is a joke.[10]

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1-93 when it gave Mitchelson only probation? Lucky for the public he was then convicted of tax fraud and will be put away for a while. But what happens when he gets out?

More recently, see LA Daily Journal articles "Judge Rips 'Misconduct' By Justice Department" (12-7-93, front page) and "Reno to Speed Justice Probes Of Misconduct - Attorney General Reacts to Criticism By Judge in LA" (12-15-93, front page) that indicate that the "crisis" in attorney misconduct is now so great that the conduct of U.S. Attorneys is being questioned.

Continuing to further the "crisis" the Bar here did nothing to GREENE and BELLI about these serious charges of misconduct. Most blatant, graphic and symbolic of this "crisis" is the Bar's refusal to discipline BELLI about his "ornament" - which is the scales of justice, only BELLI has replaced the lady with the bird finger. CW repeatedly informed the Bar, that as the entity responsible for supervising attorneys, some members of the public might surmise that BELLI was pointing his "ornament" at the Bar. (A photocopy of a picture of the "ornament" is attached as exhibit 6b; also see exhibit 2, at 13, pt. 5 and CW's 9-9-92 letter at 29). (More-over, as the highest legal office of this state, some might think BELLI is pointing at this Court). Yet see how others are treated, when committing some arguably lesser offenses: Kahn v. Cal. Dept. of Motor Vehicles, B064070, 93 Daily Journal D.A.R. _____, where the appellate court affirmed the trial court's decision upholding the DMV's order taking a personal license plate from plaintiff (a shorthand reporter) that had the word F-U-C-K in shorthand symbols "TP U BG" on her plate; and a 9-30-93 LA Times p. C5 article "Dolphin's Cox Fined $10,000 for Gesture", which reports that a NFL - Miami Dolphin player - was fined $10,000 for making obscene gesture [double bird fingers] to the crowd during warm-ups, before a Sunday game in Buffalo.

[10]See exhibit 6, which collectively consists of: a) LA Times 9-21-91 article about Bar's Special Discipline Monitor's "FINAL REPORT" reporting that attorney misconduct in California is in a "state of crisis"; b) photocopy of picture of BELLI "ornament"; c) letter written by LASC Judge Robert Einstein that appeared in the 9-93 issue of California Lawyer at page 11 (that was in response to the cover story article in the 6-93 issue of California Lawyer entitled "CONFLICT? What conflict?"; note that the 4-93 issue of Los Angeles Lawyer contains a similar article entitled "Ethics in Entertainment Law - Doing business in the Era of Conflicts Consciousness"); d) LA Times 12-7-92 "letter to the

**ANOTHER CONFLICT**

This Court must recuse itself from hearing this matter - it has a conflict of interest. The underlying legal malpractice case Ornelas v. Greene and Bell, LASC Case No. C596304, was petitioned to this Court and was summarily denied by the Court, In Bank, on June 10, 1992, with order signed by Chief Justice Lucas. This remarkably was done despite indisputable specific allegations of judicial misconduct by both the trial court[11] and the appellate

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editor" by the Bar President Harvey Saferstein concerning another attorney conflict of interest case, where an Orange County attorney obtained millions of dollars from wills he drafted and made himself the administrator/beneficiary; e) 12-25-92 letter by citizen Weber responding to Saferstein; and f) a LA Times 7- -93 CONRAD commentoonary about then president Saferstein.

[11]Issue number one on the appeal was the several acts of extreme misconduct by trial Judge Henry Nelson. (See Ornelas v. Greene/Belli, Court of Appeal Case No. B052519, at p. 8 "THE TRIAL" and appellants' brief at p. 38 "ISSUE I"). These acts included not allowing plaintiffs' counsel to mention the law in his opening statement (it was a legal malpractice case), not allowing plaintiffs' expert witnesses to testify (one an ex State Bar prosecutor), not taking mandatory judicial notice of the attorneys' violations of the "Rules", having undisclosed ex parte conversations with GREENE after Nelson failed to issue a bench warrant for GREENE when he failed to obey a trial subpena, then issuing improper/illegal rulings favorable to GREENE and BELLI which prevented the case from getting to the jury, constantly threatening plaintiffs' counsel with contempt and sanctions, in fact holding bogus hearings and then also threatening plaintiffs' counsel's attorney. (See LA Daily Journal articles "Judge Threatening Sanctions in Belli Legal-Malpractice Suit" (6-27-90, p. 3) and **"Judge Drops Frivolous Suit Fine"** (7-13-90, p. 3). Again recall that the Bar concluded GREENE and BELLI violated Rule 5-102 and that Evidence Code, section 451(c) compelled Judge Nelson to take mandatory notice of such.

He is now ex-judge Nelson, having had to resign from the bench while facing a disciplinary hearing before the Commission on Judicial Performance (CJP) concerning an 8-7-90 complaint filed by CW, listing Nelson's judicial misconduct at the trial. After the trial, CW learned that Judge Nelson: was transferred from hearing criminal cases, early in his tenure because of complaints; was later "rated unqualified by the LA County Bar"; and was rated **"one of the ten worst judges in the state"** by California Magazine. (See LADJ

court[12] -particularly the failure of both of

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articles entitled "Judge Nelson Facing Disciplinary Hearing" (4-16-91, p.2) and "Investigated LA Judge Will Retire" (6-26-91, p. 3) which provided even further examples about his long known misconduct. On 2-17-93 CW wrote the CJP asking why it had failed to investigate and discipline Nelson early on when this misconduct occurred, and then why later it repeatedly failed to deal with and remove this thug. On 3-8-93 the CJP refused to answers those questions, claiming it was confidential. The CJP simply has no credibility - see ftnt. 15 below.

[12]Like the trial judge, the appellate court refused to do its duty to take mandatory judicial notice of the violations of the "Rules" by GREENE AND BELLI. That Court attacked CW at the oral hearing (see CW's 9-9-92 letter to Supreme Court at 14, "FRAUD BY THE APPELLATE COURT") and later issued a non-published fraudulent written decision (by Presiding Justice Joan Klein) that confirmed that the "conflict" existed, but then failed to address Nelson's judicial misconduct and the misconduct of GREENE and BELLI - in fact the decision amazingly does not cite/reference even one case concerning conflicts of interests. Recall that the Bar concluded those attorneys breached Rule 5-102 and that Evidence Code, section 451 (c) compels mandatory judicial notice. It then affirmed Nelson's illegal ruling that appellants' damages were "speculative", which was preposterous and clearly contrary to the law - Smith v. Superior Court (1984) 151 Cal.App.3d 491, 496 - amazingly and ironically written by Justice Klein herself), which was brought up at the oral hearing and later in appellants' petition for rehearing (APR, at 5). The APR, APRSC and CW's 9-9-92 serially refuted every material conclusion/statement Justice Klein wrote in her fraudulent decision.

On 4-13-91 CW filed a complaint against Justice Klein with the CJP concerning her 3-2-92 fraudulent non-published written decision and her hostile demeanor at the 1-15-92 oral hearing. On 7-13-92 the CJP responded pitifully, as follows:

> "Your letter of April 13, 1992 has been considered in order to determine whether there is any basis for action by the Commission on Judicial Performance. (Review of our files does not disclose the "petitions" which you state you previously sent.) It has been concluded that the facts do not constitute grounds for proceeding further. [P] The commission's authority is narrowly limited by the California Constitution to matters in which specific facts are alleged that support a complaint of judicial misconduct or wrongdoing. The commission is not empowered to review or reverse judicial

those courts to take mandatory judicial notice of the violation by **GREENE** and **BELLI** of Rule 5-102 (Evidence Code, section 451(c)) - amazingly after each court had in fact determined that the conflict existed.

Denying the petition, this Court then also ignored its own duty to take mandatory judicial notice of that fundamental violation of Rule 5-102.[13] Recall that the Bar's March 10, 1993

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rulings, to reexamine cases on their merits, or take any action that might affect the outcome of litigation. Upon careful review of your letter, it has been determined that the factual information provided does not afford a basis for commission."

That CJP letter is pitiful because CW did not send it a "letter", but filed a formal complaint on the CJP's own form and CW formally served copies of the "petitions" [ARP and APRSC] on the CJP; yet it could not find them - but nonetheless went blindly ahead and "concluded" there were no grounds. Pitiful, simply pitiful. CW sent several further letters requesting that the CJP explain its above non-action and the further pitiful non-actions it continued to take. The CJP's director-chief counsel continually replied that its purported investigation and conclusions were "confidential". The CJP simply has no credibility - see ftnt. 15, below.

[13]See Day v. Rosenthal (1985) 170 Cal.App.3d 1125, which states that the courts are "compelled" to take mandatory judicial notice of the Rules of Professional Conduct and the breaches of such. (at 1147). Day was written by the same appellate court that wrote the Ornelas decision (Appellate Case No. B02519 [nonpub. opn.]). A companion case to Day, Young v. Rosenthal (1989) 212 Cal.App.3d 96, was written by a justice that concurred with Klein in her Ornelas decision (B02519); and Klein concurred in Young. Moreover, when the Supreme Court denied review of the Ornelas petition (Supreme Court Case No. S026070), the Justice who wrote the clever concurring opinion in Day (at 1180-81) and also concurred in Young and Volkswagen v. Williams (see ftnt. 1, above) was then on the Supreme Court. Also see Rosenthal v. State Bar (1987) 43 Cal.3d 612; 238 Cal.Rptr. 377.

Clearly then, beyond the arrogance and greed of **GREENE** and BELLI, is the question of how the jurists presiding over these three (3) cases also could repeatedly ignore the issues concerning the conflict of interest and their own independent attendant duty under the law? See Evidence Code, section 451(c)

letter in fact concluded that GREENE and BELLI violated Rule 5-102 by representing that conflict. (See exhibit 1).

Moreover, this Court was reminded of that failure in the September 9, 1992 letter CW sent to the Supreme Court Justices entitled "BLACK ROBE CRIME - A COVER-UP" (a copy was also sent

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and as set forth in Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 898:

> "Though an informed consent be obtained, no case we have been able to find sanctions dual representation of conflicting interests if that representation is in conjunction with a trial or hearing where there is an actual, present, existing conflict and the discharge of duty to one client conflicts with the duty to another. (Citations.) As a matter of law a purported consent to dual representation of litigants with adverse interests at a contested hearing would be neither intelligent nor informed. Such representation would be per se inconsistent with the adversary position of an attorney in litigation, and common sense dictates that it would be unthinkable to permit an attorney to assume a position at a trial where he could not advocate the interests of one client without adversely injuring those of the other.
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> "A word as to procedure. Initially, the trial court is entitled to accept properly executed written consents to joint representation at their face value. The judge is entitled to presume the attorney is familiar with the law and code of professional ethics and has complied with the proper standards. However, if the judge has any question regarding whether the proper standards have been observed, it is his duty to either inquire himself regarding the circumstances of the execution of the written consents and the state of mind of the clients for the purpose of making the necessary factual determination in this regard." (ftnt, omitted) (at page 901).

See exhibit 2, at p. 7, ftnt. 6 and p. 8, ftnt. 7. Also see CW's 9-9-92 letter to Supreme Court, "BLACK ROBE CRIME - A COVER-UP", at p. 29 and CW's 7-30-93 letter to the Bar's Client Security Fund, "A FURTHER CONSIDERATION" at p. 13. Some of the involved jurists that presided over the three (3) Ornelas cases have simply ignored the conflict - and their corresponding duty; worse yet, some aided attorneys GREENE and BELLI in covering it up. The California courts lack credibility - see ftnt. 15, below.

to the Bar and the Commission on Judicial Performance - hereafter CJP), which was never responded to by the Court (the Bar or CJP).[14]

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[14]It should be noted that **Chief Justice Lucas** is currently being investigated by the CJP for accepting paid trips, some apparently even from groups that had cases before the Court. Those trips and arrangements were disclosed in a series of early November 1993 articles in the San Francisco Chronicle; after the disclosure the Chief Justice "asked" the CJP to investigate him. The question must be asked though, "Where was the CJP?" Why was it not aware of this situation much earlier? Or maybe it was? Why did it not initiate an investigation of this matter when it first became aware of it? Why were the trips allowed to continue? Why did an investigation begin only after the CJP was "asked"? Of course, the asking was done only after the press shined a spotlight on the problem. One has to wonder if the "asking" and now the purported investigation are simply PR ploys?

A clue to the answer to the above question may be found in the fact that all nine (9) CJP members are appointed by the Supreme Court. For a crystal clear picture of the true situation, see ftnt. 15, below.

Also see LA Daily Journal articles entitled "Lucas' Travels And Activities Are Questioned - Expenses Paid by Parties" (11-18-93, p. 1), "Lucas Asks Probe of His Travels" (11-22-93, p. 1), "Once Again, State High Court Finds Itself Under Fire" (12-9-93, p.6, Editorial Section) and "Criticizing the Chief Justice - Malcom Lucas' Junkets Flunk 'Appearance of Impropriety' Test" (12-15-93, p. 6., Editorial Section); LA Times article "Judicial Board to Probe Chief Justice's Travel" (11-25-93, p. A25); and the 11-16-93 issue of Los Angeles Observer, p.2 article "OUR STATE SUPREME COURT" that tells about Chief Justice Lucas being severely criticized by a San Francisco paper for funding his pet project, the Amicus Foundation, in conflict with published criteria for charitable funding and entirely inconsistent with the foundation's traditional practices. There is also a reference there to Senator Quentin Kopp telling the Bay Guardian that he is alarmed about the level of spending by the Judicial Council for travel while every other state agency is cutting back on travel.

The above articles clearly point out that the independence and integrity of the Supreme Court has been compromised. The articles make one ask the question, "Has the Court become politicized?" Or worse yet, "Is it for sale?" This is a court system already in deep trouble with the public. See 12-11-92 LA Times page A3 article entitled "Confidence in Court System Dips" and 12-11-92 LA Daily Journal front page article "Californians See Unfairness in Court System" which states:

> "Chief Justice Malcom Lucas called difference between insider and public perceptions as measured by the survey 'a grave

That letter was followed by CW bringing suit against this Court (naming each Justice in their individual capacities; the three (3) appellate justices and the trial judge) in federal court, Ornelas v. Lucas, USDC - Central District of California, Case No. CV 92 7246 RG, for violating the constitutional rights of Ms. Ornelas and Ms. Castro, and CW, for their refusal to follow California law and apply Evidence Code, section 451(c).

This Court then not only has a conflict of interest, which prevents it from presiding over, and requires its recusal from this matter, it now also has a major integrity and ethical problem that must be investigated by an independent special commission or prosecutor.[15]

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> concern. It is alarming that 61 percent of Californians say they nothing or next to nothing about the courts ,' he said. 'It is worrisome about half rate our courts as only fair or poor. The efficacy of the courts is inseparably tied to the public confidence,' Lucas said. 'It is not enough that we be scrupulously fair; we must also appear so.'"

[15]See "Judges Can't Judge Themselves - Council on Judicial Performance is Rigged to Protect Judiciary" a 12-17-93 p. 6 LA Daily Journal article, that references the recent travels and investigation of Chief Justice Lucas, and then goes on to state:

> "... Because of its history, its structure and the way it operates, the commission lacks any credibility. [P] ... The commission's mandate is to insure public confidence in the courts by exposing judicial misconduct and removing corrupt, dishonest and grossly incompetent judges. . . The commission has dismally failed to carry out that mission. . . [P] The California judiciary is a close connected network of people intensely loyal and empathetic to each other as members of the same unique club. . . [P] Since commission meetings are cloaked in such deep secrecy, of course, we really don't know how the members deliberate or what sorts of factors they consider. But the system is so custom-designed for all sorts of shenanigans, like "just the right phone calls" by judges who are both friends of the judge under investigation and friends of commission

This Court also has a major credibility problem with those in the honest legal community - and most importantly with the general public.

This is the Supreme Court of the State of California and it belongs to the people of the State of California. The Justices sitting in its seven seats, hold those seats temporarily -

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members, that it gives the present process a strange odor. . . [P] As with its secret proceedings, California's judge-dominated commission is an exception is an exception among the other states in the nation. . . [P] Suspiciously unique among the agencies of California state government, the Commission lacks this elemental power to make rules for its own operation. That power is vested in the Judicial Council, which itself consists of 15 judges, four lawyers, two legislators and no members of the public. . . [P] This is an ethical sham that has resulted in a judicial "fix" of the entire process. It cynically and blatantly stacks the entire system against any honest and straightforward disciplining of judicial misconduct. . . [P] It is time to let some fresh air and sunshine into the shadowy, odorous back rooms of California's judicial misconduct investigations.

See also these further LA Daily Journal articles "On Secrecy - Punish Bad Judges in Public" (1-8-93, p. 6) and "Make Public Judicial Probes" (12-29-92, p.6). See also "When Lawyers Accuse Judges" from the 11-89 issue of California Lawyer, p. 140, which states:

> "The case [Ryan v. Commission on Judicial Performance] provides a good example of the **difficult process** of investigating and prosecuting charges of judicial misconduct, especially the role lawyers who have witnessed misconduct can play."

For those who might still think that supreme court justices are beyond reproach, review the following articles: "Supreme Court Set For Crisis - Special Probe Targets Pennsylvania Justices" (LA Daily Journal 12-17-92, p.4) and "PA. Justice's Ouster Urged For 'Grievous Misconduct'" (LADJ 11-9-93 p. 4); "Ex-N.Y. Judge [Sol Wachtler] Gets 15 Months for Threats" (LA Times 9-10-93, p. A4); "Nevada Discipline Case Heats Up" (LADJ 11-11-93, p.3), **"Open Nevada Judicial Probe Sought"** (11-15-93, p.4) and **"Nevada Jurist Asked to Skip Probe"** (LADJ 11-18-93, p.4); "Former R.I. Chief Justice Guilty on Ethics Charges" (LADJ 12-1-93, p.4) and "Former R.I. Justice's Woes Mount" (LADJ 12-6-93, p. 4). See also Mosk v. Superior Court (1979) 25 Cal.3d 474; 159 Cal.Rptr. 494.

only at the will of and with the trust of - the people. This Court has shown that it favors special interests and influential members in the legal community, over its duty to impartially follow the law. This Court has lost the trust of the people.

**CONCLUSION**

It is indisputable that attorneys **GREENE** and **BELLI** are guilty of several acts of extremely serious misconduct. It is equally indisputable that the State Bar of California has repeatedly failed to address that misconduct, when brought to and before it; in fact the Bar has worked hard to cover-up such misconduct.

It is also indisputable that the jurists who presided over the three (3) Ornelas cases, allowed such misconduct and simply did nothing; worse yet some have actively gone to the aid of those **attorneys** and helped to cover it up.

Shame on the California legal system - it is corrupt. Just how corrupt? The disposition of this verified accusation will tell.

> "One reason lawyering has always been treated as something of a special line of work is that lawyers come under such intense and varied ethical pressures. **They face countless temptations to exploit opponents and clients alike. Huge amounts of money can hang on the choices they make when no one is looking over their shoulder. Few occupations offer such chances for dishonest persons to become very rich.**
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> "**A** job that offers enormous returns to unscrupulousness **will attract many unscrupulous persons** and corrupt many persons of ordinary character. **Most of the possible ways to sort out the**

bad apples are not very promising."[16]

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[16]The LITIGATION EXPLOSION - What Happened When America Unleashed the Lawsuit, by Walter K. Olson, Truman Talley Books/Plume Printing 1992, Ch. 2, A PIECE OF THE ACTION: The Triumph of the Contingency Fee, p. 33. (Also one must read the article "ETHICS BUSINESS" at p. 36, in the 7-91 issue of California Lawyer; the article title page is attached as exhibit 7 - read in the introduction what happened to law professor Freedman when he discussed legal ethics). One has to wonder if any of the bad apples will now be thrown out, after reading the 12-7-93 front page LA Daily Journal article **"Court Affirms Non-Compete Arrangements - Justices Find Law Is More a Business Than a Profession"** telling about the Supreme Court's 6-1, recent decision Howard v. Babock, S027061. If law is now just another business and not a profession, beyond that being a sad declaration and situation, one has to ask, "If a business, what product is it selling?" Justice Mosk answered:

> "Commercial concerns are now openly recognized as important in the practice of law. Indeed we question whether any but the wealthy could enter the profession if it were to be practiced without attention to commercial success. In any event, no longer can it be said that law is a profession apart, untouched by the marketplace."

MONEY! Almighty Dollar! Certainly, most people know that for quite sometime none "but the wealthy could" afford the services of a lawyer; but moreover everyone knows that for the most part the "law business" has been producing not only, less and less justice - but, more and more needless controversy. One must then ask, "If now a business, then is the law no longer a noble institution?" See The LITIGATION EXPLOSION, Ch. 16, THE BALANCE OF LEGAL PEACE, p.339, which starts:

> "For all the many successes of the American society, our system of civil litigation is a grotesque failure, a byword around the world for expense, rancor, and irrationality. America's litigation explosion has squandered immense fortunes, sent the cream of a nation's intellectual talent into dubious battle, reduced valuable enterprises to ruin, made miserable the practice of honorable professions, and brought needless pain to broken families. It has been a spiral of destructive recrimination, with no end in sight. [P] This practical failure is born of an underlying moral failure. Our law has ceased to attach moral significance to wrongful accusation. The fee-shifting practiced in all other major countries has a plain meaning: accusation is a serious matter. Do not expect to offer excuses if you have accused wrongly. The apparatus of

As this Court stated in the case of Berry v. State Bar, 42 Cal.3d 806, at 815, above:

> "'Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys.' (Citations.)."

Is that in fact the "**principal concern**" of

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coercion is not there to be deployed at you whim."

No, for the most part it is clear that the law no longer is a noble profession/institution. Like the bark of "Peanuts, popcorn, get-cha peanuts . . ." that one hears from the street and ball park vendor, one now hears on the tube - the whirring blades of the "Injury Central" chopper, "Larry Parker got me . . ." and sees the give-away coffee mug of Sam Spital's firm that reads "We're tough, we're smart, and we know the law" as he is repeatedly successfully sued for malpractice - all products from the "legal business". And on a closer look, less obvious and more subtle, similar to the insider games played by the likes of Michael Milken, Ivan Boesky, Charles Keating, the Keating 5, Alan Robbins and Clayton Jackson, there is a matter like this case - that the "legal" insiders play and try to keep secret and hidden from the public. Regardless of where a matter is on today's "legal business" spectrum, it is seldom professional, it is seldom noble. It's now a **money game, a money business, it's the "legalbusiness"**. It used to be just the law - a noble profession and institution.

Although largely out numbered, and most probably one that will be largely ignored, there was a faint, lone voice of hope, reason and moral sense in Howard. There the dissenting Justice stated:

> "I cannot accept that the practice of law has been so altered that it is now irretrievably profit-centered rather than client-centered. If ethical rules for attorneys must accommodate the 'realities' of practicing law, then those realities ought to include this court's insistence that attorneys serve more than their own interests and accomplish more than amassing fees. Protection of the public and preservation of public respect for the law require no less."

On with the commerce of the "legal business?" "Peanuts, popcorn, lawsuits, get-cha lawyers . . ."

this Court? Will this Court get rid of the rotten apples? Or as stated in Howard v. Babcock, above in ftnt. 16, is there more "concern" about the marketplace of lawyers? The disposition of this verified accusation will tell.

DATED:

Submitted with concern,
GARY L. ZERMAN
CW - Complaining Witness

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Petitioner's Verification to VA, p. 20

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Proof of Service to VA, p. 21

THE STATE BAR
OF CALIFORNIA
333 Franklin Street, S.F., CA

OFFICE OF TRIALS

March 10, 1993

PERSONAL AND CONFIDENTIAL

Gary L. Zerman, Esq.
5821 Hickory Drive, Suite D
Agoura, CA 91301

Re: Case Nos. 91-0-02431 and 91-0-06361;
Respondents: Melvin M. Belli and
R. Browne Greene

Dear Mr. Zerman:

The State Bar has conducted an investigation regarding your complaint against Melvin M. Belli and R. Browne Greene.

The State Bar of California has completed its investigation into the above-referenced complaint, and we conclude that thee was a violation of former Rule 5-102(B) of the Rules of Professional Conduct.

Given the circumstances in which this misconduct occurred, and considering the overall disciplinary record of each attorney, your complaint would not likely result in suspension or revocation of each attorney's license to practice law. We have therefore issued a Warning Letter to the attorneys, cautioning them to avoid such conduct in the future. Should other complaints indicate that this was not an exceptional circumstance, the matter may be reviewed for further action.

If you are not satisfied with the State Bar's decision to end this matter with the issuance of the Warning Letter, you may request a review of that decision. Your request, which must be in writing, would then be considered by the Complainants' Grievance Panel. Please direct

your request to the Complaint Audit and Review, State Bar of California, 333 South Beaudry Avenue, 24th Floor, Los Angeles, CA 90017.

Pursuant to the Rules of Procedures of the State Bar of California, your request for review must be received within three months of the date of this letter, except upon a showing of good cause.

The State Bar thanks you for bringing this matter to its attention. As the agency responsible for processing complaints of misconduct by attorneys, the Bar must depend upon the active involvement of the public in bringing these matters to our attention. Your decision to become involved to ensure that such conduct is not repeated in the future.

Very truly yours,
Andre T. Wachter
Deputy Trial Counsel

(This letter was exb. 1 to VA, p. 21)

LAW OFFICE OF GARY L. ZERMAN
5821 Hickory Drive, Suite D
Agoura, CA 91301
March 25, 1993

Complaint Audit & Review Dept.
State Bar of California **CERTIFIED MAIL**
333 S. Beaudry Avenue, 24th Floor
Los Angeles, CA 90017

Ms. Andre T. Wachter
State Bar of California
Deputy Trial Counsel
555 Franklin Street
San Francisco, CA 94102-4498

**Re: Case Nos. 91-0-02431 and 91-0-06361**
**Respondents: Melvin Belli and Browne Greene**

Attention Audit & Review Department and Ms. Wachter:

This letter is in reply to Ms. Wachter's one (1) page 3-10-93 letter to me regarding the above-referenced Bar complaints/cases.

**Be advised** that I am **totally dissatisfied** with and **appalled** by, the Bar's (Ms. Wachter's) decision to discipline attorneys Greene and Belli here with, **a mere scolding**, by way of a "Warning Letter . . . cautioning them to avoid such conduct in the future." As will be shown below, this action by the Bar is not only totally inappropriate, but it is a **sham**.

By way of this letter I personally, and on behalf of Ms. Ornelas and Ms. Castro and the public, am requesting that the Bar try again. In no uncertain terms I want the Bar's Complainant's Grievance Panel to review the Bar's (Ms. Wachter's) purported investigation and purported disciplinary decision in these matters.

I will show below, that the Bar's and Ms. Wachter's investigation of the misconduct committed by attorneys Greene and Belli in these

matters, is not only puzzling and incompetent, but it is a **fraud** upon the public. The discipline proposed here is totally inappropriate. If it was not such a pathetic gesture and if it was not such a commonplace occurrence of neglect by the Bar, I would have to believe it was a mistake or a joke. Ms. Ornelas, Ms. Castro, the public and myself though are not laughing.

I will show below that the Bar and Ms. Wachter have totally failed here in their duty to protect and safeguard the public, and instead, have once again protected dishonest attorneys who have committed egregious misconduct that harmed clients and caused disrespect for the law.

Ms. Wachter in paragraph 2 of her letter states:

> "The State Bar of California has completed its investigation into the above-referenced complaint, and we conclude that there was a violation of former rule 5-102(B) of the Rules of Professional Conduct."

Rule 5-102 states:

> "(a) A member of the State Bar shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter of employment. A member of the State Bar who accepts employment under this rule shall first obtain the client's written consent to such employment. (b) A member of the State Bar **shall not represent conflicting interests, except with the written consent of all parties concerned."**

As you are aware, the complaints/cases to the Bar here against attorneys Greene and Belli only begin with:

a) when attorney Greene, while

representing Ms. Ornelas and Ms. Castro, along with Ventura Munoz in Ornelas, et al., v. Ford, LASC Case No. C209950 (**Case 1**), ignored the blatant **conflict of interest** that arose between Ms. Ornelas and Ms. Castro, with Munoz, from the August 31, 1976 single-vehicle accident. That accident occurred when driver Munoz, with passengers Maria Ornelas, her 8-day-old baby Jesus and Fabiola Castro, took a turn too sharp and too fast, which caused the truck he was driving to tip over on its left side.[1] Baby Jesus was thrown out the left window, his little body and skull were crushed by the truck as it slammed against the pavement; he was killed. The truck then quickly caught fire with Maria and Fabiola inside; they both were horribly burned over most of their bodies. Greene's ignorance of the **conflict** caused Ms. Ornelas and Ms. Castro to present the wrong case at trial and the loss of a $2,000,000 settlement offer from Ford.

b) when attorney Melvin Belli, while representing Ms. Ornelas and Ms. Castro, along

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[1]The evidence establishing that Munoz alone caused the accident was simply overwhelming. In addition to that above: "The wrongful conduct of Munoz was always Ford's defense: before trial, at trial and on appeal. Ford also contended Munoz was negligent for overloading the truck, not having a gas cap on the truck and for not having the truck battery secured in/with a bracket; Ford also asserted that the battery was the ignition source of the fire and that the missing cap allowed gas to spill and feed the fire after it started in the engine compartment. Finally, Ford pointed out that the testimony of driver Munoz was materially different than that of passenger Ornelas regarding Munoz having driven the freeway on-ramp before; Munoz claimed that it was his first time, while Ornelas testified she had ridden with Munoz driving it on several occasions prior to the accident." (See APRSC at page 8, ftnt. 3 and my 9-9-92 letter at page 16, para. c).

For the affect this evidence - the **conflict**- had on the jury see DFES at 9-21-82 - declaration of Case 1 jury foreman Michael Wyatt and at 6-4-83 - excerpts from Case 1 Appellants' Brief prepared by Belli. It is indisputable that with driver-tortfeasor Munoz on their side (the conflict), that Ms. Ornelas and Ms. Castro did not stand a chance at trial; their case simply was doomed.

with Ventura Munoz in the appeal of Ornelas v. Ford (**Case 1**), as well as in Ornelas, et al., v. Greene, et al., OCSC Case No. 380250 (**Case 2**), also ignored that same blatant **conflict of interest**, twice! Belli's ignorance of the **conflict** caused Ms. Ornelas and Ms. Castro to prosecute the wrong appeal (**Case 1**) and wrong case against attorney Greene (**Case 2**) resulting in the loss of at least a $2,000,000 settlement/judgment, twice!

Obviously, both attorneys Greene and Belli committed misconduct and **"violated"** Rule 5-102, when they failed to get written consent from Ms. Ornelas and Ms. Castro, waiving the conflict. No other conclusion is possible.

The **problem**, however is that for some inexplicable reason, the Bar's review/analysis **stops there** and fails to address additional facts, other acts of misconduct and the applicable governing law. Furthermore and most troubling, is that the Bar then treats that indisputable **"violation"** as though what attorney Greene and attorney Belli did here was only a simple oversight, a mere technicality - manifested by the Bar's **"scolding"**.

Unfortunately, for Mr. Greene and Mr. Belli, a complete and proper review and analysis of their conduct shows that simply is not the case. To the contrary, as will be shown below, attorneys Greene and Belli are guilty of **intentionally** committing several much more serious offenses.

The evidence that I provided earlier to the Bar, clearly established facts that demonstrate that both attorneys Greene and Belli **intentionally** violated Rule 5-102 and the attendant case law, by their **intentionally** ignoring and not disclosing the **conflict of interest** to Ms. Ornelas and Ms. Castro, and then further by taking their cases to trial with the **conflict** present. By ignoring and not disclosing the **conflict of interest** to Ms. Ornelas and Ms. Castro (which both attorneys

Greene and Belli have admitted), attorneys Greene and Belli committed a much much more serious offense - they in fact committed **fraud!**

You at the Bar, are well aware, that on behalf of Ms. Ornelas and Ms. Castro I filed a complaint Ornelas/Castro v. Greene, Belli, et al., LASC Case No. C596304 (**Case 3**) against these attorneys - the gravamen being such "**violation**" (with further acts of misconduct). I remind you, that the trial court there determined as a matter of law that the **conflict** existed; that was later affirmed by the appellate court, which also determined that "Munoz alone caused the accident." (See exhibit A to APR and APRSC - **Case 3** appellate decision at page 11).

You at the Bar have totally ignored those facts (and many many more, as set forth below) and the applicable governing law, that I specifically and in extreme detail provided to the Bar by way of:

a) my 3-28-91 complaint to the Bar;

b) my 6-10-91 letter to the Bar (with supporting documents);

c) the copy of Appellants' Petition for Rehearing - APR;

d) the copy of Appellants' Petition for Review to the Supreme Court - APRSC;

e) my 9-9-92 letter to the Supreme Court, that included a **DETAILED FACTUAL AND EVIDENTIARY SUMMARY**;

f) my 10-2-92 letter; and

g) my 3-4-93 letter.

**THE LAW**

First, because Munoz's fault in causing the accident was "at issue" in the trial and appeal of **Case 1**, the **conflict of interest** could not be waived (Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 898), even if attorneys Greene and Belli had done their clear duty to apprise Ms. Ornelas and Ms. Castro of such. In fact, taking the case to trial with the **conflict** present made it "impossible" for Ms. Ornelas and

Ms. Castro to receive a fair trial and so improper that it was an "irregular proceeding." (Price v. Giles (1987) 196 Cal.App.3d 1469, 1473).

Second, by ignoring the conflict attorneys Greene and Belli further indisputably "violated" Rule 5-102, as they committed a breach of a mandatory fiduciary duty, which was negligence as a matter of law (Lysick v. Walcom (1968) 58 Cal.App.2d 136, 148), which the courts in Cases 1, 2, and 3 were required (but for some inexplicable reason repeatedly refused) to take judicial notice of. (Day v. Rosenthal (1985) 170 Cal.App.3d 1125, 1147).[2]

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[2]See California Evidence Code, section 451(c) which mandates judicial notice of attorney violations of the Rules of Professional Conduct. For an explanation why these judges/courts repeatedly refused to take judicial notice, see APRSC at page 7, ftnt. 1 and 2, page 8, ftnt 4(d) and (h) and page 28, ftnt. 14 and my 9-9-92 letter at 28. Also see Klemm at page 898, which states:

> "Though an informed consent be obtained, **no case** we have been able to find sanctions dual representation of conflicting interests if that representation is in conjunction with a trial or hearing where there is an actual, present, existing conflict and the discharge of duty to one client conflicts with the duty to another. (Citations). As a matter of law a purported consent to dual representation of litigants with adverse interests at a contested hearing would be neither intelligent nor informed. Such representation would be per se inconsistent with the adversary position of an attorney in litigation, and common sense dictates that it would be unthinkable to permit an attorney to assume a position at a trial where he could not advocate the interests of one client without adversely injuring those of the other.
>
> * * * *
>
> "A word as to procedure. Initially, the trial court is entitled to accept properly executed written consents to joint representation at their face value. The judge is entitled to presume the attorney is familiar with the law and code of professional ethics and has complied with the proper standards. However, if the judge has any question regarding whether the proper standards have been observed, **it is his duty** to either

Third, as stated in Betts v. Allstate (1984) 154 Cal.App.3d 688, 716, a legal malpractice case that considered Rule 5-102 where another attorney also ignored and failed to disclose a **conflict of interest** to the client:

> **"This is not a case in which the question of breach turns on legal technicalities requiring the fine exercise of professional judgment.** The issue was simply whether Ruston [the attorney] did or did not abandon Betts' [the client] best interests in deference to the **conflicting interest** of Allstate. The proof on that issue was clear in its inculpatory impact. It speaks for itself without the aid of expert opinion."
>
> * * * *
>
> "When the facts are viewed in the light most favorable to the judgment, the record compels affirmance of the finding that Ruston **breached the duty** owed to Betts **in several respects. The lawyers failed by** (1) lack of disclosure and sound advice; (2) after the excess verdict, when the conflict of interest was unmistakable, actively working to protect Allstate and persisting in

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require counsel to inquire further or inquire himself regarding the circumstances of the execution of the written consents and the state of mind of the clients for the purpose of making the necessary factual determination in this regard. (ftnt. omitted) (at 901).

In Case 1, beside being expressly advised of the conflict on at least two (2) occasions before the trial, Greene and the trial judge were expressly advised of the conflict, by the Ford attorney, in the early stages of the trial while discussing how to proceed with the Ford cross-complaint against Munoz. (See ftnt. 4 below and DFES at 6-6-81). The judge there, like Greene, simply ignored the conflict, the law (Klemm) and his duty.

manipulating Betts against her interests; (3) assisting in manufacturing a false record against the time when a bad faith lawsuit might be instituted; (4) rather than advising consultation of independent counsel as possible or desirable, resisting the efforts of such counsel to become informed when finally retained; (5) discouraging Bett's assignment of rights in exchange for personal release and influencing her instead in the direction of bankruptcy." (at 717).

Fourth, because attorneys Greene and Belli both, not only admitted they never obtained the clients' consent, but admitted that they **intentionally** did not disclose the **conflict of interest** to Ms. Ornelas and Ms. Castro - they breached an affirmative duty to do so and their misconduct (failure) amounts to **fraud!** (Ball v. Posey (1986) 176 Cal.App.3d 1209, 1214).

It is indisputable that, that "**violation**" alone, because it was so clear under the law and so clearly intentional (as will again be shown to you, below), is sufficiently serious misconduct by attorneys Greene and Belli to warrant their removal, or at a minimum a very very lengthy suspension from the Bar.[3] **Just stop for a moment to consider what that**

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[3]For example see Morgan v. State Bar (1990) 51 Cal.3d 598, which states at page 607:

". . .The presumptively appropriate level of discipline for violations of Rule 5-101 [which prohibits attorneys from representing "adverse interests" and thus comparable/equivalent to Rule 5-102] is suspension, unless the misconduct and harm to the client are minimal in which case the degree of discipline is reproval. (Stds. [The Standards for Attorney Sanctions for Professional Misconduct] 2.8)."

Unfortunately here, both the misconduct of attorneys Greene and Belli, and the harm to Ms. Ornelas Ms. Castro are extreme.

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Unfortunately here, both the misconduct of attorneys Greene and Belli, and the harm to Ms. Ornelas Ms. Castro are extreme.

"violation" has cost Ms. Ornelas and Ms. Castro - the total loss of any compensation for their losses and horrible burn injuries, plus a 15-year ride on an emotional legal roller-coaster fraught with deceit.[4]

Should you still have any doubts about the seriousness of that "violation", there are many many more acts of serious misconduct that attorneys Greene and Belli also committed, which the Bar has failed to address.[5]

Referring back to Ms. Wachter's letter again for a moment, I am particularly puzzled by paragraph 3, which states:

> "Given the circumstances in which the misconduct occurred, and considering the overall disciplinary record of

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[4]Also consider the negative affect and impact the misconduct has had on the legal community. One example, is where in Case 1, both Greene (in motions for New Trial/JNOV) and Belli (in the appeal) in an act of desperation to avoid the results of their having ignored the conflict, resorted to accusing the trial judge and opposing counsel of misconduct; the appellate court readily dispatched those claims as having no merit. (See my 6-10-91 letter with Case 1 appellate decision, as exhibit 5; also see 1 CT 127 and DFES at 9-9-91 and 6-4-83).

Another, in Case 2, Belli told a newspaper that Greene had treated his clients like "chattel";Greene reponded that Belli had "manipulated" the testimony of plaintiffs at trial. (See DFES at 3-12-85 and 3-29-85).

[5]Obviously, attorneys Greene and Belli put their own selfish interests (another payday - their contingency fee from contract with Munoz) ahead of the interests of their clients Ms. Ornelas and Ms. Castro; they ignored their duties to their clients and gambled, and lost - lost something that was not theirs, the compensation of Ms. Ornelas and Ms. Castro. See the opinions of legal malpractice experts attorneys Richard DuPar and Tom Low (former California State Bar prosecutor) who Ms. Ornelas and Ms. Castro intended to call at trial (Case 3), both of which state how the conflict had a fatal affect on the jury and then state that attorneys Greene and Belli both committed serious violations of the Rules of Professional Conduct, that their conduct fell below recognized standards of practice and they ignored the interests of their clients. These declarations were provided to the Bar with my 6-10-91 letter, as exhibit 4. Did the Bar even read them?

each attorney, your complaint would not likely result in suspension or revocation of each attorney's license to practice law. We have therefore issued a Warning Letter to the attorneys, cautioning them to avoid such conduct in the future. Should other complaints indicate that this case was not an exceptional circumstance, the matter may be reviewed for further action."

Just what does Ms. Wachter mean by "**Given the circumstances in which the misconduct occurred**" and that "**this case was not an exceptional circumstance?**" Ms. Wachter, could you please explain those comments?

**ACTS OF MISCONDUCT**

Apparently, Ms. Wachter never read the circumstances that were set forth in my complaint, the APR, the APRSC, my 6-10-91 letter and in the DETAILED FACTUAL AND EVIDENTIARY SUMMARY - DFES, pages 31-57, that was attached to my 9-9-92 letter. (Again I previously provided copies of all these documents to the Bar). Contrary to Ms. Wachter's conclusion, the numerous acts of misconduct set forth there (and again below) establish a set of **quite exceptional circumstances.**

Briefly, I will note here for you some of the most egregious acts of misconduct committed by attorneys Greene and Belli.

**Attorney Greene**

1. After attorney Greene ignored the clear fundamental facts of the accident that readily established the **conflict of interest** - the CHP accident investigation report that listed driver Munoz operating the truck improperly and in violation of the vehicle code, the cause of the accident and recommended that Munoz be prosecuted for vehicular manslaughter (baby Jesus); and the coroner's report that concluded baby Jesus died from a crushed skull, not fire - attorney Greene then **intentionally** ignored:

a) the Ford cross-complaint filed against driver Munoz (DFES at 7-11-80);

b) at least three (3) separate instances where the Ford attorney **expressly advised** of the **conflict of interest**[6]; and,

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[6]ONE - on 7-10-80 attorney Greene's office (attorney Charles O'Reilly) was expressly advised of the conflict of interest and the issue of informed consent by the Ford attorney during the taking of Ms. Ornelas' deposition in Case 1. (See DFES at 7-10-80). The Bar was provided the relevant pages from Ms. Ornelas' deposition with my 6-10-91 letter, as exhibit 8.

TWO - on 8-8-80 Ford filed a motion regarding the cross-complaint and in a declaration attached to the motion, stated: "59. At that point your declarant brought out the fact that the attorneys representing the various parties plaintiff in this action are facing a clear conflict of interest with respect to their continued representation of the driver of the subject vehicle, VENTURA MUNOZ-FLORES." (See DFES at 8-8-80 and Case 1 court file, clerk's transcript at 687-798).

THREE - on 6-6-81 attorney Greene took Case 1 to trial and during preliminary matters, the subject of Ford's cross-complaint against driver Munoz was discussed with the court. There the Ford attorney again expressly informed Greene about the issue of the conflict of interest stating:

> "MR. HUNT: . . . The case was trailed. It was not for the fact that a cross complaint had been filed. The cross-complaint was filed because we believed the evidence is going to show the sole proximate cause of the death of the child was the act of Ventura rolling the vehicle over and the child went under the vehicle, according to evidence and was crushed to death. At least that is our position. I assume they will contest that position. Ventura should very definitely be a party to this action. They elected not to, I assume because it would have presented a conflict of interest for them."

Attorney Greene then argued the cross-complaint should be severed and stated:

> "MR. GREENE: . . . Your honor, if Ford wanted to have this jury make this decision on this cross-complaint, very simply what would be done is what is always done. After the verdict comes in against Ford for $20,000,0000[twenty million] then you just send the jury right back out and let them determine if there exists a cross-complaint against Ventura. It is very simple. That is what they want to do. That will take 10 more minutes. He is not going to have any more evidence, he is not going to take any more time. What you are going to do is

c) a further advisement when told by the judge, just before the case was submitted to the jury, that under the evidence driver Munoz would be found liable.[7]

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minimize confusion and smoke laying which is basically the whole purpose of this particular cross complaint." (Case 1, Trial Transcript, Vol. 1, pages 42-63).

The Bar was provided these pages with my 6-10-91 letter, as exhibit 10.

[7]The DFES at 7-30-81 contains the following entry. At the conclusion of the evidence, while going over jury instructions this discussion occurred:

"THE COURT: All right. Well, what he's basically saying, then is -- and you guys have both had a lot more experience in this than I have, but don't you kind of have a feeling for this, case, that they'll probably find some -- in other words, looking at its face on the best standpoint of your case, Mr. Greene, don ; you feel they'll probably find some sort of percentage of contrib?

MR. GREENE: I don't think they are going to find legal cause on it Judge. See, the last case I just finished with Judge Hupp was worse than that; they found negligence on the part of the driver of the car and found no comparative, no legal cause, because they found that the seat would have broken, irrespective of whether the driver was drunk or speeding or anything.

THE COURT: Did they find contributory negligence?

MR. GREENE: Yes, they found a percentage of 20 percent.

THE COURT: All right.

MR. GREENE: But they found no cause.

MR. HUNT: That case was a little bit broader in its facts than what we have here.

THE COURT: But there they did find a percentage.

MR. GREENE: Yes.

THE COURT: Don't you think there's a potential possibility here they will find some percentage?

MR. GREENE: That certainly is possible, yes.

THE COURT: Looking at the , you know, even Severy felt that he had turned the corner too fast, didn't he?

MR. GREENE: Words to that effect.

THE COURT: So if they find your best shots in your case, one of your better witnesses was Severy, and if he suggested it,

2. Attorney Greene allowed and encouraged his employee investigator Walter Goode to procure a 10% investigation contingency contract with each plaintiff. (Recall, I previously provided the Bar copies of those contracts with my 6-10-91 letter; moreover, the Bar was informed that this was a **regular practice** of the Greene law firm, according to Goode v. Greene, et al., OCSC Case No. 394373). This practice clearly was an unconscionable, if not illegal act, and clearly was not in the clients' interests. (See DFES at 5-31-77, 7-30-81 and 1--82).

It also created another **conflict of interest** and breached further fiduciary duties, as attorney Greene, later defending himself in **Case 2**, testified that the clients and Goode insisted that all communications, particularly settlement offers, go through Goode. That was another **"violation"** of Rule 5-102. This purported arrangement was also in direct **violation** of Rule 5-105, which placed an nondelegable duty upon the attorney to communicate settlement offers to the client. Although, when questioned further about that purported arrangement, **Greene admitted there were no documents**: establishing that arrangement; where he had advised the clients about its consequences - i.e., it was contrary to Rule 5-105, created a **conflict** and that it would not be prudent; or where the clients in fact had agreed to such. (Greene deposition, **Case 2**, 126:6-128:7). **Ms. Ornelas and Ms. Castro, to the contrary, denied there was any such arrangement**.

Moreover, at the trial of **Case 2**, Goode was one of the main witnesses on plaintiffs' behalf.

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I would assume they're [the jury] going to find something." (Case 1 trial transcript, Vol. 31, pages 6039-6041; also see DFES at 7-30-81 entry).

The Bar was provided these pages with my 6-10-91 letter, as exhibit 10.

He was repeatedly impeached and arguably his multiple positions played a role in plaintiffs losing the case - ironically, **due to** the **conflict** (Goode contract) that Greene himself had wrongly fostered/allowed. Of course, again there was the affect of the **main conflict**, having negligent-driver Munoz again sitting on the same side with Ms. Ornelas and Ms. Castro. The jury in **Case 2** (like the jury in **Case 1**), arguably focused on Munoz and his fault and wrongly concluded, now in hindsight, that plaintiffs were not entitled to the settlement money Ford had offered, rather than correctly focusing on whether Greene had properly communicated the offer - ironically, again begging the issue of that **conflict**, which the Bar has correctly concluded that Greene had wrongfully ignored in **"violation"** of Rule 5-102. (See DFES at 6-4-83 and my 6-10-91 letter).

3. Attorney Greene recklessly ignored the evidence and fact that baby Jesus died from blunt force trauma, being crushed by the truck, which was caused solely by Munoz - as opposed to fire, the allegations against Ford. Greene ignored that **conflict**. This was another **"violation"** of Rule 5-102. By ignoring that **conflict**, Greene created the following further problems: he failed to depose the coroner until during the trial (who only affirmed his opinion that baby Jesus died from a crushed skull, not fire) and he failed to obtain a consultant forensic pathologist until just shortly before trial. The pathologist attempted to exhume the body of baby Jesus (now almost 5 years later), but having ignored proper protocol, initially got the **wrong body** - which of course only served to alienate the jury and thus destroy the case. (See DFES at 7-16-81, 9-21-82 - declaration of **Case 1** jury foreman Michael Wyatt; also see my 6-10-91 letter, exhibit 4 - declaration of Richard DuPar).

4. Attorney Greene in circumstances similar to Betts v. Allstate, above, prepared

statements for his clients to sign stating he had advised them of the $2,000,000 settlement offer from Ford at the trial, after a 12-81 article appeared in American Lawyer entitled **"Worst Performance"**, that claimed Greene had not. (Belli is quoted in that article stating he wanted to handle the case against Greene). Greene then had his investigator take the documents and obtain the signatures of Ms. Ornelas and Ms. Castro. Neither Greene, nor anyone else, ever told Ms. Ornelas and Ms. Castro about the article, nor explained the statement, nor advised that it could be against their interest, nor advised them to seek the advise of an independent attorney. This obviously created **another conflict of interest** between attorney Greene and his clients Ms. Ornelas and Ms. Castro. This clearly was another **"violation"** of Rule 5-102 (as well as Rule 5-105), if not another act of **fraud** upon them! (See DFES at 10-16-81, 1- -82, and 7-30-81).

**Attorney Belli**

1. Attorney Belli in handling **Case 2** faced the same **conflict of interest** that Greene had in **Case 1**, only now the **conflict** was in fact established. Obviously, with Ford not at fault that left only driver Munoz, who Belli was representing, along with fault-free passengers Ms. Ornelas and Ms. Castro. This was a **"violation"** of Rule 5-102. Belli then, of course beyond what simple common sense, basic analysis, the Rules and case law would dictate, somehow **inexcusably** also ignored the numerous express references in the court and trial transcripts telling of the **conflict**. (See DFES at 7-10-80, 8-8-80, 6-6-81, 7-30-81, 6-4-83 and 11-16-84; see my 6-10-91 letter, exhibit 4 - declaration of Richard DuPar).

2. Attorney Belli became involved in **Case 2** (which concerned Greene's failure to have communicated the $2,000,000 offer to his clients) from his comment in the above American

Lawyer article, when investigator Goode had a falling out with attorney Greene over payment for his services and then brought Ms. Ornelas and Ms. Castro to attorney Belli. Despite the settlement offer communication problems from Goode's contract/arrangement with the plaintiffs in **Case 1**, and now that arrangement essentially being Greene's defense in **Case 2**, **amazingly** attorney Belli allowed Goode to again procure another 10% contingency contract with each plaintiff. Obviously this contract presented **another conflict** and an unconscionable/illegal act. This was a **"violation"** of Rule 5-102. (Recall, I previously provided the Bar copies of those contracts with my 6-10-91 letter; see also DFES at 6-7-82, 5-31-77 and 1- -82).

3. Attorney Belli, by jointly handling **Case 2** and **Case 1** created **another conflict** - which he **intentionally** ignored, even after being expressly advised of such by Greene's office.[8]

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[8]The DFES entry at 1-12-83 references a letter of that date by attorney Charles O'Reilly (Greene's partner) that replied to a letter from Belli's office (by partner Paul Monzione's who co-handled Case 1 and Case 2 with Belli - who obviously then also ignored the conflicts) that requested their thoughts about appellate theories for Case 1. In pertinent part attorney O'Reilly wrote:

> "Without discussing the ethics of this conduct, it goes without saying that your office now represents the Ornelas, et al., Plaintiffs in an alleged malpractice case against this office and also represents the Ornelas, et al., Plaintiffs in an appeal from an adverse judgment in the case that underlies the alleged malpractice case against this office. Therefore, simple logic dictates that if Mr. Belli desires to harm Mr. Greene, he will pursue the appeal under the threat of the cross purposes possible in the Ornelas et al., v. Ford case. [P] The truly sad, sad part of this scenario is that Ms. Ornelas, Ms. Castro, Mr. Jose Munoz, and Mr. Ventura Munoz-Flores are the people that will suffer most from Mr. Belli's blind hatred of Mr. Greene." (3 CT 753).

The Bar was provided a copy of attorney O'Reilly's letter with my 6-10-91 letter, as exhibit 12. It is somewhat ironic, if not hypocritical for attorney O'Reilly to chide attorney Belli for ignoring this conflict, after he and partner Greene had

This was a **"violation"** of Rule 5-102. (See DFES at 1-12-83, 1-31-83 and 6-4-83; see my 6-10-91 letter, exhibit 4 - declaration of Richard DuPar).

What is most troubling here, is that neither attorney Greene nor Belli, have in any way showed remorse for their misconduct and the **indisputable** fact their misconduct caused Ms. Ornelas and Ms. Castro to lose all compensation for their losses and horrible burn injuries - twice! Not to mention that their misconduct has caused considerable embarrassment, shame and distrust for the Bar and the entire legal profession and that it also wasted considerable court resources - the trial of **Case 1** (an "irregular proceeding", Price v. Giles), the appeal of **Case 1**, the trial of **Case 2** (an "irregular proceeding"), and the trial, the appeal of, and two (2) appellate petitions in **Case 3. Obviously, all of which could have been easily prevented had attorney Greene just respected the rights of his clients followed the law and complied with Rule 5-102. The same is true for attorney Belli.**

**FURTHER AGGRAVATING ACTS**

As will be shown below, attorneys Greene and Belli are not only not sorry for what they did, they are not even sorry they got caught. As shown below, they have continued to display attitudes of blind arrogance and contempt for the law, their attorney oaths, and for their legal duties, repeatedly violating Business & Professions Code, sections 6013, 6067, 6068.

Attorney Greene

1. After serving the civil complaint in **Case 3** on attorney Greene, he replied on 5-28-86 with a letter stating: "I read with great humor the attempt at a Complaint that you did on this

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earlier repeatedly **intentionally** ignored the main conflict. (See fnt. 6 above). He nonetheless should be given some credit for recognizing it, doing his duty and being correct.

matter . . . would you be kind enough to inform me of the insurance carrier for your errors and omissions policy." (See DFES at 5-28-86).

2. Then on 12-9-86 I appeared at a motion in **Case 3**. Attorney Greene's partner, Charles O'Reilly (who was also a named defendant in the case) appeared on behalf of Greene's office; after the hearing he threatened me and blocked my exit from court. (See DFES at 12-9-86). I wrote Mr. Greene about the incident (particularly because Mr. O'Reilly had earlier repeatedly harassed and then threatened Mr. Goode when taking his deposition in **Case 2**) and cautioned him that I would not tolerate any further improper conduct from Mr. O'Reilly, or any other member of his firm and should such occur I would notify the Bar. **Mr. Greene never responded** and clearly he did not heed my advice. (See No. 3 directly below). As the Bar is aware, Mr. O'Reilly had been the subject of Bar discipline earlier. As he handled **Case 1** himself for an extended period of time before Greene, he like Greene also intentionally ignored the **conflict**. (See DFES at 7-10-80).

3. During the prosecution of **Case 3**, attorney Greene **repeatedly disobeyed trial subpoenas**. While the case was trailing (on the beeper) Greene while under subpena, on one occasion left town and on another left the country, without notifying the court or me; each instance necessitated my having to go to court to remove the case from the beeper. I then sent a letter to Greene asking him to explain this conduct and to explain why the Bar should not be notified of his disobedience and illegal behavior; Greene never replied. (See DFES at 2-7-90, 3-26-90, 5-4-90, 6-4-90, 6-6-90 and my 10-2-90 letter to the Bar). Shortly thereafter, the trial began and several telephone calls were made to Greene's office in an attempt to locate him and again request/confirm his appearance under the subpena. Greene failed to return the calls and thus he had to be served with another

trial subpena; he then not only failed to appear as the subpena directed, but failed to call the court or myself. I requested the judge issue a bench warrant; the judge refused. I requested a brief continuance; the judge refused. Greene then later had **undisclosed ex parte communications** with the trial judge, who then made improper comments/rulings favorable to Greene, when he finally appeared. (See DFES at 6-6-90 and pages 51-4; also see my 3-4-93 letter to the Bar, with declaration of Stephen Kuri). **These incidents alone should warrant disbarment. How and why has the Bar ignored them?**

4. During the trial, Greene admitted: he thought there was no **conflict** (2 RT 380-1, 384) and that he thought it was "**absolutely absurd**" to have obtained consent from his clients (2 RT 384). Then when asked if he had consulted any legal authorities for those opinions, stated: "No, I didn't look at any books. **I didn't have to for that.** Because I know what the facts were and having tried a number of these cases it was **my judgment and the judgment of everyone in our firm that was the way to proceed.**" (2 RT 385). The when asked if anyone in his firm was a specialist in **conflicts of interests**, he responded: "No, I wouldn't call it that. **We know what the law is.**" (2 RT 385). (See Day, Betts, Yokozeki v. State Bar (1974) 11 Cal.3 436 and Maltaman v. State Bar (1987) 43 Cal.3d 924).

5. Most recently, attorney Greene again demonstrated that he learned nothing or still just does not care about the law of **conflicts of interest**, as shown by a 9-7-91 LA Daily Journal article entitled **"Award in Plane Crash Overturned** - Judge voids $57-million verdict, tells of a plaintiffs' lawyer who failed to disclose that he once worked for firm that represented the defendant aircraft maker." The plaintiffs' counsel there was Greene's firm/partner. (See my 9-9-92 letter at page 25).

**Attorney Belli**

1. On 5-14-86 I sent a letter to attorney Belli requesting the underlying case files of Ms. Ornelas and Ms. Castro be provided to me, as their attorney. For quite some time he failed to even respond. Then after he finally responded, production of the file was delayed further and when the file was finally produced a large portion was missing. Throughout the prosecution of the lawsuit, he repeatedly failed to comply with and abused basic discovery law. (See my 2-14-89 letter at 3 CT 728-36). Most telling is when attorney Belli without cause walked out of his deposition shortly after it began, but first threatened me and then called me a "miserable bastard." (Belli deposition **Case** 3, Vol. 1, page 42; also at 2 CT 392). Then when the deposition resumed (actually compelled by court order, with referee) so did his disorderly and disrespectful conduct, the deposition ending with him again threatening me and calling me an "incompetent bastard." (Belli deposition **Case** 3, Vol. 2, page 101; also at 3 CT 810).

2. During his deposition in **Case** 3, attorney Belli was asked whether during his handling of **Case 1 and 2**, he ever consulted any legal authorities, including the Rules of Professional Conduct, he responded: "**Never, No. No reason to.**" (Belli deposition, **Case** 3, 80:24-81;14; see also DFES at page 29 and 54-5).

3. During the prosecution of **Case** 3 attorney Belli threatened me with Bar complaints, in fact while under oath in deposition falsely stated that he had filed a Bar complaint. (Belli deposition **Case** 3, at 18:19, 57:24, 101:21). He also falsely answered several other material questions in his deposition. (It appears that the Bar has missed that those are acts of **perjury**). He also directed his employee-attorney to write letters threatening to sue my employers. (See my 3-28-91 Bar complaint, with deposition pages, and DFES at 1-9-89, 3-21-90, 3-28-90, and 2-27-91).

**These incidents alone should warrant disbarment. Why and how has the bar ignored them?**

4. After the purported trial of **Case 3**, when the judge, without cause and without competence held bogus sanction hearings against me, attorney Belli (or at his direction his employee) telephoned the LA Daily Journal and requested they attend/report the case and hearing dispositions. Belli and his employee-attorney then made disparaging and untrue statements assaulting my reputation, which were published/reported. (See DFES at 6-26-90, 6-27-90, 7-12-90, 7-13-90, 8-1-90, 9-24-91 and see pages 56-7).

5. It is no secret, that over the last decade plus, attorney Belli has left a path of numerous embarrassing acts and legal problems in his wake, as evidenced by an article entitled **"The Lion in Winter** - Melvin Belli, Both King of Torts and King's Fool, Still Rages at 84" that appeared in the December 1991 issue of California Lawyer. Most emblematic of his attitudes of blind arrogance and disrespect for the law is shown in a photograph and his comments at page 38-9 of the article. (See DFES at page 29 and 30B; see also a much earlier 3-85 front page article in THE AMERICAN LAWYER entitled **"CLIENTS BEWARE: Use of this once-great king of torts and his ever-changing band of associates may be hazardous to your case"** and an 11-27-89 front page LA Times article **"Melvin Belli: Is the Image Tarnishing?"**).

**THE BAR'S CONDUCT**

The Bar's investigation and proposed discipline in this matter is appalling. The purported investigation is pitiful. The discipline a sham. The public deserves better. Shame on the Bar.

It appears though, that this a common practice of the State Bar and has been a continuing and mounting failure for some time, despite its numerous and repeated claims of

reform.[9]

For example, a 9-21-91 LA Times article entitled "State Bar Steps Up Disciplining of Lawyers" tells about a special monitor, University of San Diego law professor Robert

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[9]See "Fax Poll: 'It's Become a miserable Profession'", California Lawyer, 3-92, page 96; "THE ETHICS BUSINESS: Sorting out the Rules of Professional Conduct", California Lawyer, 7-91, page 36; "The State Bar Court - ONE YEAR LATER: Is it working and is it worth the cost?", California Lawyer, 12-90, page 30; State Bar Report - "Professionalism: Attempting a Revival", California Lawyer, 9-89, page 101; "SPECIAL REPORT: LAWYERS AT RISK", California Lawyer, 10-89, page 45; "Going For Broke on Bar Discipline: State Bar Pushes for more Discipline Changes", California Lawyer 1/2-88, page 17; "BAR WATCH: Discipline Monitor Urges More Reform", California Lawyer, 7-87, page 89.

In addition to the subject matters, another personal example of such purported reform was when "the Bar" itself chose to initiate a complaint against me around 7-90. My first knowledge of the complaint was from a 1-2-91 letter from the Bar informing me the charge was being "dropped." Calling the Bar, I was informed that the basis was: when a Bar investigator had read an article in the LA Daily Journal where Judge Nelson was holding a hearing threatening to sanction me for bringing a frivolous and bad faith lawsuit (Case 3) and where Belli amazingly was asking for $165,000 in costs. As you are aware, Judge Nelson never awarded any sanctions against me. (As you are also aware, Issue #1 on appeal was Judge Nelson's numerous acts of judicial misconduct at the trial - those were conveniently and wrongly ignored by the appellate and then the Supreme Court; I also filed a complaint against Judge Nelson with the Commission on Judicial Performance regarding that misconduct - a disciplinary hearing was scheduled, but before it was held, he wisely departed from the bench. See my 9-9-92 letter at page 12, page 27 at ftnt. 3, and beginning at page 46 "THE TRIAL"). One has to wonder how or why the Bar would recklessly initiate that complaint, prior to the conclusion of the hearing - and in light of the late drop date, it is obvious the Bar did not attend the hearing, call the court, call me, or read the subsequent article.

Just where was the Bar when attorney Greene and Belli were running roughshod over the rights of Ms. Ornelas and Ms. Castro during Case 1 and Case 2, which were widely reported, particularly Case 2? The conflict was blatant and obvious, and so were the attorney's violations. Where also were the judges/courts that these cases passed through? (See Klemm at 901 and Day at 1147).

Fellmuth, being named to the State Bar "to investigate a bar discipline system **widely assailed as too lax.**" The article continued, stating that despite a broadly revamped system "further reforms are needed to quell a '**state of crisis**' in attorney misconduct", according to Professor Fellmuth, who then "chided the Bar for publicly minimizing the need for reform." Fellmuth further stated "**The level of attorney dishonesty** in representations to the court, in promises to clients [and in] dealings with adverse counsel **is embarrassing.**" The article concluded:

> ". . . a spokeswoman for a consumer group often critical of the bar said the report confirmed that the California lawyer-discipline system '**still fails to meet consumer needs.**' [P] 'The discipline system may be operating like a well-oiled machine', said Deborah Chalfie, legislative director for HALT (Help Abolish Legal Tyranny). 'But that machine is still spitting out the vast majority of consumer complaints, and **lawyers are still calling all the shots.** They're just doing it more quickly.'"

The Bar's investigation and its mere "scolding" here, show not only that Professor Fellmuth and Ms. Chalfie were right, but that their concerns have gone unheeded. It also appears, that beyond the Bar's incompetence here, maybe Ms. Chalfie's comment that **"lawyers are still calling the shots"** was right on the mark, when one considers that both attorneys Greene and Belli are past presidents of the very influential California Trial Lawyers Association (CTLA). A review of the reported Supreme Court discipline opinions readily and consistently shows that, where other lesser renowned attorneys committed even much less and fewer offenses than these here, they were punished

much much more severely.[10] The punishment imposed here, pales in significance to that imposed in the other cases. The punishment here simply is a **sham**.

An even more recent example of the Bar's continued failure to police attorneys, was demonstrated by articles in the LA Times that told about another **conflict of interest** case where an Orange County attorney had been the recipient of millions of dollars from retirees' estates, who's wills he had prepared and made himself the beneficiary/administrator. (See LA Times 11-24-92 page A3, 12-2-92 at A3, 12-20-92 at A3 and 12-31-92 at 1). The 12-31-92 article entitled **"Where There's a Will, There's A Way - for Lawyers to Steal"**, quotes a judge investigating that attorney's misconduct, saying that there **needs to be additional controls placed on attorneys**. That judge continued:

> "The whole system is based on state-licensed people, known as attorneys, **who are supposed to be people of integrity and trust.** If someone betrays that trust, it's sometimes difficult to find and goes undetected."

The following **"Letters to the Editor"** responded to those articles and were published in the LA Times. On 12-7-92 Harvey Saferstein, President of the State Bar of California wrote:

> That the Bar has "waived confidentiality in this particular proceeding . . . This disturbing account provides me an opportunity to **stress how important** it is for any

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[10] Sugarman v. State Bar (1990) 51 Cal.3d 609, 618; Morgan v. State Bar (1990) 51 Cal.3d 598, 605: Conner v. State Bar (1990) 50 Cal.3d 1047; Van Sloten v. State Bar (1988) 48 Cal.3d 921, 932; Weber v. State Bar (1988) 47 Cal.3d 492, 501; Maltaman v. State Bar (1987) 43 Cal.3d 924, 957; Schneider v. State Bar (1987) 43 Cal.3d 784; Yokozeki v. State Bar (1974) 11 Cal.3d 436, 451; Himmel v. State Bar (1971) 4 Cal.3d 786.

person who questions the actions of an attorney to report this behavior to the State Bar's intake unit . . . it is critical for the public to let us know **immediately if they suspect any dishonest or unethical behavior on the part of an attorney."**[11]

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[11]Like president's Saferstein letter, Ms. Wachter's letter to me concluded with a call to the public:

> "The State Bar thanks you for bringing this matter to its attention. As the agency responsible for processing complaints of misconduct by attorneys, the Bar must depend upon the active involvement of the public in bringing these matters to our attention. Your decision to become involved helps to ensure that such conduct is not repeated in the future."

But the problem is not that the public is not reporting misconduct - the Bar is overwhelmed with complaints. (See 9-21-91 LA Times article "State Bar Steps up disciplining of Lawyers"). The problem is what the Bar does: not properly investigating the complaints and not properly imposing discipline.

Beyond how the Bar has failed in handling the subject complaints/cases, the Bar has failed in handling two (2) other related attorney misconduct complaints: 91-0-02432; 92 CR 11055/91-0-07593. The first, was "dropped" without any notification to the complaining party - me; upon learning such on 2-13-93 I wrote the Bar advising I was shocked by such conduct from the Bar, particularly: 1) no notification had been given when decision was made; and 2) the decision itself, to drop the matter, as I believed the alleged misconduct was serious and established. I then requested to be formally advised of the decision, if that in fact still was the Bar's decision; as if so, I intended to take the matter to the Grievance Panel. I have not heard further from the Bar. The second, the Bar initially repeatedly refused to even "take" or investigate the complaint; then, only after prolonged prodding did it relent. However, the investigation thereafter has been only cosmetic - for appearance sake, as the Bar showed virtually no interest in looking at or pursuing evidence; instead, just simply being content with accepting a self-serving denial from the charged party - who in the underlying matter of the complaint, as well as with a long history before that, had repeatedly demonstrated an inability to follow and respect the law! . After receiving notice the Bar "had no jurisdiction" and "there are no violations",on 9-8-92 I thus had to write the Grievance Panel. On 10-7-92 I received notice that the Grievance Panel had received by letter; I since have not heard anything of a substantive nature.

Is there any doubt that Ms. Chalfie, Professor Fellmuth and Mr. Weber

On 12-25-92, the public, by way of one Mr. Walter Webber answered Mr. Saferstein's letter. Mr Webber wrote:

> "The California Bar Assn. is not and will never be, an effective organization for addressing the problem of unethical or dishonest lawyers. The purpose of the State Bar is a public-relations organization to foster the perception that lawyers themselves are capable of protecting the public from other lawyers. This is an inherent **conflict of interest** and therefore not probable. The confidentiality that the president refers to is a device to **hide complaints**. The Bar is acting in its **own self-interest** in dropping the confidentiality provision in this complaint. If Californians want action in regard to unethical or dishonest lawyers, then they must find **other organizations** besides the State Bar. I suggest a good start would be to ask for legislation against lawyers writing themselves into their clients' wills. Most other states have already done this."

I can not further address the failings of the Bar here, better than Mr. Weber has. Apparently though, beyond the above, the Bar has also failed to take notice of what recently occurred at another state agency/organization, also responsible for protecting the public by investigating complaints against professionals.

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were/are right?.

A 1-22-93 LA Times article, entitled **"Staff Exposed Dismissal of Doctors' Files** - Investigation: Medical Board workers say they were angered that bosses had swept away backlog of complaints. The whistle-blower's are called heroes" tells about the California Highway Patrol - CHP being called into investigate complaints that the California Medical Board ordered dismissal of hundreds of complaints against doctors. (The CHP investigated the matter because the state attorney general had a conflict of interest). A report of the investigation in fact found that "hundreds of Medical Board cases had been improperly dismissed--and in many instances destroyed."

Maybe the failures here by these attorneys, the Bar and the Medical Board really are no surprise, when you read the 9-20-92 LA Times article by Richard Reeves entitled **"The Lie, Big and Small: 20th-Century American Ethics: How did we become so tolerant of lying?** A pertinent part of that article states:

> "If the worst is true and the United States is indeed destroying itself economically or ecologically, politically or spiritually, this will be our epitaph: '**They lied**!'. . . [P] It's killing us. How can government of the people survive if the people believe or accept things that are not true, and that they know are not true? Even leaving President Bush and Bill Clinton out of this, lies are personal and **public betrayals** more certain to overthrow a country than violence; and if there are more of them now at all levels of American life, it means we are in greater trouble than we think."

**CONCLUSION**

The above information without doubt has established that attorney Greene and attorney Belli committed numerous acts of serious

misconduct. It also without doubt has established that they put their own selfish interests, above and beyond the interests of their clients - and have harmed their clients.

The above information without doubt has established that the Bar has not properly investigated this matter and has not properly disciplined these attorneys. It also without doubt has established that the Bar has again failed to protect the public.

If attorneys - **officers of the court and keepers of the law**, do not abide by their oaths and follow the law, why will and should the public? And when attorneys who do not follow the law, are caught and they are not punished, what will other attorneys soon do?

Obviously, some (and later more) will follow and they then will also not meet and keep the standards. Then soon there will be no standards. It only follows then - soon there will be no law.

It is said, one test of character and integrity, is how the group confronts those of its own, when they have gone astray. These attorneys have gone astray. These matters have been and are a test for the Bar. The grade the Bar gets here, is best reflected in a comment from Betts v. Allstate, above: "The proof on that issue was clear in its inculpatory impact. It speaks for itself without the aid of expert opinion." The proof has been set forth above.

To repeat, I would ask the Bar to try again. I should not have had to do that.

Finally, these matters are also a test case of whether we as attorneys, as The Bar, mean what we say. That our purpose is to serve and protect our clients - the public. A test case of whether we have integrity and whether we are examples of the California law we have taken an oath to uphold. Or, is what we say all just lip service?

On behalf of my clients Ms. Ornelas and Ms. Castro, I therefore would request that the Bar

consider, as part of the potential discipline imposed on Mr. Greene and Mr. Belli here, that they be ordered to provide some compensation/ reimbursement to Ms. Ornelas and Ms. Castro, as a condition to their resuming/continuing to practice law. (Yokozeki v. State Bar (1974) 11 Cal.3d 436, 451). Ms. Ornelas and Ms. Castro still suffer and wear the horrible scars from the tragic accident, but they also suffer and wear the scars that they received from the California legal system. Had attorneys Greene and Belli simply done their clear duty and followed the law that would not have happened. Enclosed is a copy of the 7-31-81 settlement offer of $2,000,000 from Ford. I would also request that the Bar consider this letter (or if that is not possible, please send me) an application to the State Bar's Client Security Fund (Business & Professions Code, section 6140.5), on behalf of my clients Ms. Ornelas and Ms. Castro for reimbursement. The above settlement offer (and others) were in fact in the hands of Mr. Greene and Mr. Belli, but they simply threw them away - along with the hopes of Ms. Ornelas and Ms. Castro for a brighter future - by ignoring the conflict, by ignoring the law and by ignoring their clients. Mr. Greene and Mr. Belli thought they knew better than the law, they thought they were above the law. Were they right?

I await your prompt reply.

Very concerned,

GARY L. ZERMAN

GLZ/ms
cc

(This letter was exb. 2 to VA, pages 22-39)

COMPLAINANTS' GRIEVANCE PANEL
THE STATE BAR OF CALIFORNIA
333 South Beaudry Avenue, 24th Floor
Los Angeles, CA 90017-1466

December 2, 1993

GARY L. ZERMAN
5821 HICKORY DRIVE #D
AGOURA, CA 91301-3938

In re: 93 CR10503/04; 9102431 & 9106361
Rs: Melvin Belli and R.B. Greene

Dear Mr. Zerman:

This is to advise you that at its November 5, 1993 meeting, the Complainants' Grievance Panel denied your request for further investigation of the above matter. This denial of your request is without prejudice to reopening if significant new evidence of misconduct becomes available. Accordingly, the State Bar of California will take no further action concerning your complaint at this time. Because the Panel considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision.

If you wish further review of the State Bar's actions in this matter, you may file a verified accusation against the attorney with the Supreme Court of California. Under certain limited circumstances, the Court may order the attorney to appear and answer the charges against him or her.

If you wish to file an accusation with the Supreme Court, you must do so within 60 days after this letter was mailed to you as required by Rule 952(d) of the California Rules of Court.

Should you desire further information regarding this Supreme Court procedure you must contact the Supreme Court Clerk's office (in Los Angeles at 300 South Spring Street, Second Floor, Room 2752, Los Angles, California 90013,

telephone number (213)897-5158 or in San francisco, California 94107, telephone number (415)396-9400 or a private attorney.

Very truly your,
Lynne Geminder, Director
Complaint Audit and Review

LG:gmp

(This letter is exb. 4 to VA, p. 46)

**GARY L. ZERMAN, Esq.**
**Complaining Witness - CW**
**5821 Hickory Drive, Suite D**
**(805)251-6100/(818)991-7108**

**IN THE SUPREME COURT**
**OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE
VERIFIED ACCUSATION OF
ATTORNEY GARY L. ZERMAN

AGAINST Case No. S037066

ATTORNEYS
**R. BROWNE GREENE**
AND
**MELVIN M. BELLI**

TO CHIEF JUSTICE MALCOLM LUCAS AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Attorney Gary L. Zerman (hereafter CW - complaining witness), files this **FURTHER EVIDENCE OF FRAUD**, in the instant verified accusation (hereafter - VA), S037066.

**INTRODUCTION**

The basis for filing a verified accusation of attorney misconduct is that the State Bar has failed/refused to do its duty to properly investigate and properly discipline serious attorney misconduct, when such was brought to and before it. Thus the accusation then is not only against the attorney, but also charges the State Bar with incompetence or misconduct of its own. (In re Walker (1948) 33 Cal.2d 488; also see verified accusation against attorney (ex-judge) Henry Nelson, S042217, at page 2).

Misconduct by attorneys and/or the State Bar simply can not, and will not be tolerated. This Court stated in Berry v. State Bar (1987) 42 Cal.3d 806, 815:

**"'Our principal concern is always the**

> protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys.' (Citations.)."

This Court however, repeatedly has had to chastise the State Bar for ignoring that "principal concern" - see Maltaman v. State Bar (1987) 43 Cal. 3d 924 and Guzetta v. State Bar (1987) 43 Cal. 3d 96; also see Lubetzky v. State Bar (1991) 54 Cal.3d 308. Those failures were pointed out to the State Bar again in the September 20, 1991 "Final Report" by the State Bar Special Discipline Monitor, Professor Robert Fellmeth (Center for Public Interest Law, University of San Diego), at p. 14; he also stated that despite touted reforms, attorney misconduct in California was in a "state of crisis". (VA, exhibit 6a, p. 50). Sadly, it has gotten worse.

EVIDENCE OF FRAUD BY THE STATE BAR IN THE INSTANT MATTER As set forth in the instant VA[1]

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1The following is a summary of the underlying cases which form the basis of the instant VA. GREENE represented negligent-free passengers Maria Ornelas and Fabiola Castro, along with the driver Ventura Munoz, in a single-vehicle accident personal injury case (Case 1 - Ornelas v. Ford, LASC Case No. C209950, Appeal No. B66611 [nonpub. opn.]). Ford's defense, based on the CHP accident report and the LA County Coroner's autopsy report, was that: the driver operated the vehicle in a reckless manner by (among other things) taking a turn too fast and too sharp, causing the accident, thereby killing Ms. Ornelas' 8-day-old baby Jesus, and causing the horrible burn injuries to Ms. Ornelas and Ms. Castro. Ford was correct - the jury determined that the driver Munoz alone caused the accident; the appellate court affirmed such. Despite express warnings, GREENE ignored and never disclosed the adverse/conflicting interest of driver Munoz, to clients Ornelas and Castro, because of greed - Greene's potential recovery from his contingency contract with driver Munoz. (See VA, exhibit 2, p 28, ftnt. 6, pt. THREE). GREENE presented the wrong case which caused Ms. Ornelas and Ms. Castro to lose a $2,000,000settlement offer from Ford, and the trial. (See VA, exhibit 5a, page 47 - a 12-81 AMERICAN LAWYER article entitled "WORST PERFORMANCE").

at page 2, in her March 10, 1993 letter (see **VA**, exhibit 1, p. 21) - Ms. Andre Wachter, Deputy

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**BELLI** then represented the **same** parties (thus the **same** conflict) in a legal malpractice case against **GREENE** (Case 2 - Ornelas v Greene, OCSC Case No. 380250). **BELLI** then also ignored and never disclosed his, or **GREENE's** conflict, then presented the wrong case and caused Ms. Ornelas and Ms. Castro to lose a verdict of at least $2,000,000 as well as an earlier $550,000 settlement offer. **BELLI** also took over the appeal of Ornelas v. Ford and ignored that conflict too, thereby failing to raise the most fundamental issue - the conflict - in the appeal. **BELLI's** handling of both the appeal and the malpractice case created another conflict - which of course he also ignored. (See exhibit 5b, page 48 - O'Brien's Evaluator summary re Ornelas v. Greene).

CW represented Ms. Ornelas and Ms. Castro in a legal malpractice case against **GREENE** and **BELLI** (Case 3 - Ornelas v. Greene/Belli, LASC Case No. C596304, Appeal No. B052519 and Supreme Court No. S026070) the gravamen being the failure of Greene and Belli to disclose the conflict. From the moment CW walked into his courtroom until he aborted the purported trial, CW was verbally assaulted and threatened with contempt and sanctions by lawless rogue Judge Henry Nelson (see **VA** page 11, ftnt. 11 and see verified accusation against attorney (ex-judge) Nelson, S042217). The case never got to the jury, despite Nelson determining as a matter of law that there was a conflict between passengers Ornelas and Castro with driver Munoz, coupled with admissions from **GREENE** and **BELLI** that they thought there was no conflict (see **VA**, exhibit 2, page 33, pt. 4 and page 34, pt. 2); that conflict then was affirmed by the appellate court (see **VA**, page 15, ftnt. 12). With the conflict determined as a matter of law, it is axiomatic that **GREENE** and **BELLI** then, both owed and breached mandatory legal duties under Rule 5-102 (and interpreting case law). However the trial, appellate and Supreme Court all refused to take mandatory judicial notice of those duties/breaches (Evidence Code, section 451(c)) - thereby wrongly allowing **GREENE** and **BELLI** to escape the consequences/liability of their misconduct and the harm caused to Ms. Ornelas and Ms. Castro. Yet, see Ms. Wachter's 3-10-93 letter that concluded **GREENE** and **BELLI** violated Rule 5-102. For further factual details see: **VA**, exhibit 2; APR - Appellants Ornelas' and Castro's petition for review; APRSC - Appellants Ornelas' and Castro's petition for review to Supreme Court; CW's 9-9-92 letter to Supreme Court, **"OVERVIEW OF THE 3 CASES"** and **VA**, exhibit 5c, page 49 - 7-11-90 National Law Journal article **"What Goes Around Comes Around"** re Ornelas v. Greene/Belli. The APR and APRSC, serially refute every material conclusion in the fraudulent appellate decision, B052519, written by Justice Joan Klein.

Trial Counsel of the State Bar of California, concluded:

> ". . . **that there was a violation** [by attorneys Greene and Belli] **of former rule 5-102(B) of the Rules of Professional Conduct.**"

Ms. Wachter however ignored that **"violation"** was in fact, an act of fraud (Ball v. Posey (1986) 176 Cal.App.3d 1209; see also Betts v. Allstate (1984) 154 Cal.App.3d 369) committed by attorneys Greene and Belli upon their clients - Ms. Ornelas and Ms. Castro. Ms. Wachter also ignored that **"violation"**, in fact requires severe punishment (Beery v. State Bar (1987) 42 Cal. 3d 806), well beyond the mere scolding that she gave - as in gift - to attorneys Greene and Belli, via her private:

> ". . . **Warning letter to the attorneys** [Greene and Belli], **cautioning them to avoid such conduct in the future.**"

Ms. Wachter also ignored the following indisputable facts and **"violations"**:

1. that attorneys Greene and Belli committed several other intentional **"violations"** of Rule 5-102, even after being repeatedly expressly warned they were committing such (**VA**, exhibit 2, pages 27-32);

2. that attorneys Greene and Belli, with their **"violations"** of Rule 5-102, caused the wrong and tainted cases to be presented (**"irregular proceedings"** - Price v. Giles (1987) 196 Cal.App.3d 1469, 1473), resulting in the cases of clients Ornelas and Castro to be **"doomed"** (**VA**, exhibit 2, page 39);

3. that attorney Greene, after his failure to properly communicate a $2,000,000 settlement offer from Ford Motor Company (without disclosing the conflict, Greene could never properly communicate that, or any offer), committed further **"violations"** of Rule 5-102 - as well as further acts of fraud (Ball and Betts, above) on clients Ornelas and Castro, by

preparing misleading documents for them to sign, in an attempt to cover-up his earlier fraud, which created another conflict (**VA**, exhibit 2, page 30);

4. that attorneys Greene and Belli allowed their investigator-employee to get a 10% contingency contract with clients Ornelas and Castro (beyond their own lucrative contingency contracts), creating another conflict, and thus committing another **"violation"** of Rule 5-102 (**VA**, pages 29 and 31);

5. that attorneys Greene and Belli made threats against CW, committing other rule **"violations"** (**VA**, pages 32 and 34);

6. that attorney Greene disobeyed trial subpoenas and then had undisclosed ex-parte communications with the trial judge (Nelson - who had been requested, but refused to issue a bench warrant on the non-appearing attorney Greene), thereby committing further rule **"violations"** (**VA**, page 32; see also verified accusation against attorney (ex-judge) Henry Nelson, S042217, at pages 10-20, 35, 47 and 103); and,

7. that attorney Belli committed acts of perjury, thereby committing even further rule **"violations"** (**VA**, page 34).

The above **"violations"** are clear, irrefutable and extremely serious. Not only is it a fact that Ms. Wachter ignored the above serious acts of misconduct committed by attorneys Greene and Belli, and that she failed to punish them in any meaningful manner (attorneys Greene and Belli should be <u>disbarred</u> - see p. 18, below and see **VA**, exhibit 2, pages 26, 33 and 34), but it is also clear that her <u>own</u> conduct obstructed justice and was an act of fraud upon the public.[2] (See <u>Gov't. Code</u>,

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[2]**But that is no surprise. Because it is well known that a "double standard" has existed for well connected members of the State Bar, at <u>both</u> the State Bar and our courts for sometime. See Judge Robert Einstein's letter to**

section 1222 and **VA**, p. 8).

A further act of fraud and obstruction of justice was then committed upon the public when the State Bar's Complainants' Grievance Panel (hereafter CGP) **did nothing**, in response to CW's March 25, 1993 letter (see **VA**, exhibit 2, pages 22-39) which appealed to the CGP and sought its review of Ms. Wachter's "**sham**" investigation and "**fraud** upon the public." To wit: the December 2, 1993 1-page letter (**VA**, exhibit 4, page 46) by Ms. Lynne Geminder, Director of the Complaint Audit & Review Department of the State Bar. In pertinent part Ms. Geminder's letter states:

> "This is to advise you that at its November 5, 1993 meeting, **the Complainants' Grievance Panel denied your request for further investigation** of the above matter. The denial of your request is without prejudice to reopening if significant evidence of misconduct becomes

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**the editor that appeared in the September 1993 issue of California Lawyer at page 11; copy attached to VA, exhibit 9c, page 108) and the incident of attorney Marvin Mitchelson (VA, p. 10). Most recently see where attorney Robert Tourtelot's letter to Judge Lance Ito, requested the judge report attorneys Johnnie Cochran and Robert Shapiro to the State Bar for making "misrepresentations" about his client to the court (9-22-94 Daily Journal p.2 article "Attorney for Detective Asks Ito And Bar to Investigate Cochran" and 10-5-94 LA Daily News p. NEWS-9 article "Fuhrman lawyer seeks probe of 2 lawyers - Pair accused of making false statements") and see where attorney Cochran told Ito about "rumors" [another false statement?] he heard from an old of LAPD friend [not named] of his, about an alleged secret meeting taking place between Judge Ito and the prosecutors, which Judge Ito called "preposterous", yet did nothing (10-22-94 LA Times p. A2 article "Striking Candor [?] Emerges in Closed-Door Session"). Finally see Scott v. Krissman, which involves other well connected defendant-attorneys being accused of misconduct, but where the trial never got to the jury, the judge sanctioned attorney Scott $218,000 for bringing a "frivolous" case, yet the judge was accused of being involved with the defendants (10-12-94 Daily Journal p. 5 article "Justices Reject Sanction Plea by Sole Practitioner" and 9-28-94 front page Daily Journal article "Orange County Lawyer Isn't Giving Up Yet - Fight Before High Court").**

available. Accordingly, the State Bar of California will take no further action concerning your complaint at this time. Because the Panel considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision."[3]

Beyond the above rampant deceit by the State Bar, by the CGP and by Ms. Wachter, ironically the State Bar's own reported State Bar Court decisions indisputably prove their fraud and obstruction of justice. But of course, contrary to the instant matter, those decisions concern some not so well connected members of the State Bar. EXAMPLE: in In the Matter of Aguiluz (1994) 94 Daily Journal D.A.R. 7727, No. 90-1-14710, the following heading appears:

> "Improper Handling of Joint Representation of Driver and Passenger in Accident Case Warrants Discipline."

At page 7730 Aguiluz states:

> "Late last year, in the Matter of Sklar (citation) 615-616, we discussed thoroughly the conflict-of-interest issues surrounding an attorneys's joint representation of a driver and passenger in a automobile accident case. After analyzing relevant disciplinary and civil decisions of the Supreme Court and Courts of Appeal, and statutory and decisional changes in tort law, we

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[3]Closed and confidential meeting? No details? The State Bar apparently has never heard of due process. It is clear that this closed and secret group, as wellas the entire closed and secret State Bar, is out of control and is not accountable to the people of the State of California. (See above at p. 2, re "state of crisis" and see CW's 7-19-94 letter to the State Bar's Ms. Johnson, below at p. 12).

concluded that the Rules of Professional Conduct in effect in 1984, even prior to the 1992 amendment of rule 3-310, encompassed an attorney's concurrent representation of driver and passenger, for in those situations there was an inherent potential conflict of interest. Our decision in Sklar was filed only five days before oral argument in this proceeding and we afforded the parties an opportunity for post-argument briefing.

"In seeking to distinguish Sklar and the cases we cited in Sklar, respondent contends that potential conflicts were not included within the scope of former rules 5-102(B) and 3-310(B). OCTC disagrees. We need not repeat our analysis in Sklar, but we see nothing in respondent's arguments which causes us either to reconsider or deviate from our Sklar holding. Indeed, in our view, this case shows precisely why the rule of professional conduct on conflicts of interest exist: to avoid placing attorneys in positions where even through an exercise of good faith, they would seek to reconcile or deprecate differing interests of clients and render their representations of any one client less effective as a result.[4] (See

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[4]But this is the exact positionthat Greene put himself- intentionally, and clearlyabsent any "goodfaith". The same is true for Belli. (See VA,p. 28; also see: the declarationof Case 1 jury foreman MichaelWyatt that showedthe affect the conflichad on the jury (AB p. 35,2 CT 496);and the declarations of legal malpractice experts attorney Richard DuPar (AB p. 24, 3 CT 719) and Tom Low,ex-State Bar prosecutor (AB p. 24,3 CT 719-27)about the duties

Sklar, supra, 2 Cal. State Bar Ct. Rprt. at p. 661, discussing Anderson v. Eaton (1930) 211 Cal. 113, 116-118). **Without following the disclosure and written consent requirements of the rules**, respondent assumed that clients Sandoval wound not sue client Penate. Even if such an assumption were correct, **it does not show absence of conflicting interests and is no defense to lack of compliance.** (ftnt. omitted). Moreover, as found by the hearing judge, in this case, **an actual conflict of interest developed** [5] once respondent learned on May 18, 1989, of Passamuneck's insurer's position three days earlier that liability rested with one of respondent's clients, Penate. Still,

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**Greene and Belli breached to clients Ornelas and Castro. Nelson refused to let DuPar and Low even testify. Klein and this Court then ignored those declarations and that evidence. (See AB at 22, 24; APR at 3; APRSC at 8; and CW's 9-9-92 letter to the Court at 7).**

**[5] Actual conflict? It is hard to conceive a conflict more "actual" than in Ornelas v. Ford, because driver Munoz - killed Ms. Ornelas' 8-day-old baby son Jesus and caused the horrible burn injuries to her and Ms. Castro. (See ftnt. 1, below). In fact Judge Nelson and Justice Klein concluded as a matter of law that there was a conflict (Nelson - AB, p. 21, 2 RT 393-400 & 435-8; Klein - APR p. 3 and her written decision, B052519 p. 4 and 11); Klein even stated at page 7, "The jury absolved Ford of wrongdoing in the personal injury case. Thus it must be accepted as established that Munoz alone caused the accident."** Yet both Nelson and Klein then ignored the law (Evidence Code, section 451 (c) and Day v. Rosenthal (1985) 170 Cal. App. 3d 1125, 1147) and illegally threw the case out, fraudulently claiming the case **"lacks merit"** and that it was **"frivolous"**. (See AB p. 22-24, 2 RT 435, 452; Klein written decision p. 5 and 10). Recall Ms. Wachter's 3-10-93 letter? (See p. 2, above). This Supreme Court then condoned Nelson's and Klein's fraud, as well as that committed by Greene and Belli, when it denied APRSC. (See verified accusation against Nelson, exhibits 10a and 10b, p. 109-111).

respondent **did not comply with the disclosure and written consent requirements of the rule. He is therefore culpable of wilful violation of former rule 5-102(B) whether or not that rule applied to potential conflicts."**

FURTHER EXAMPLE: in In re Matter of Sklar (1993) 2 Cal. State Bar Ct.Rptr. 602, 614 (87-O-13044; 91-P-07863), the court states:

**"Analysis of Potential Conflict of Interests Under Former Rule 5-102(B))**

"First we address respondent's challenge to the finding that in three instances where both the driver and passenger in automobile accident cases sought representation by respondent (counts 4, 6 and 7), he **violated former rule 5-102(B) by not advising them of the potential conflict of interest in the joint representation and failing to obtain their written consent** to appear as counsel for both.

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**"The issue before us** is whether the existing case law in 1984 so construed former Rule 5-102 as to make it clear that potential conflicts between clients required written consent for a single attorney to represent them in civil litigation. (Citation). . . . [P] We therefore look to the state of the law as of 1984 involving conflicts in civil proceedings, much as the **Supreme Court has itself done in analyzing this area of professional responsibility.** In Klemm v. Superior Court (1977) 75 Cal.App.3d 893, cited by the Office of Trials, the Court of Appeal for the Fifth Appellate District considered the issue of

whether former rule 5-102 prohibited an attorney from representing both a wife and a husband in an uncontested dissolution proceeding and concluded that both actual and potential were addressed by the rule. In cases of dual representation where there was the potential for conflict at any point in the litigation, the court found that "with full disclosure to and informed consent of both clients there may be dual representation at a hearing or trial. [Citations.]" (Id. at p. 899.) Indeed, the court stated that a purported consent **in a contested proceeding** to dual representation of litigants with actual present adverse interests **would be per se inconsistent with the attorney's duty** not to injure his client by advocating the interests of another client. (Id. at p. 898). [6]

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[6]**This was the gravamen of Ornelas v. Greene and Belli. (See ftnt. 1, above). In fact Klemm v. Superior Court was cited both at length and repeatedly in the Ornelas/Castro trial brief (at 3 CT 580, 592 and 601), AB (26, 36, 41-2), APR (7, 12), and APRSC (4, 5, 7, 8, 13, 16, 19, 20, 21, 23). In fact, the same quotes that appear above in Sklar, and more, were quoted verbatim to this Court in APRSC at page 13 (and APR at 7). Moreover, ftnt. 6, at p. 13 in the APRSC stated:**

> **"The Klemm court knows of "no case" allowing dual representation of conflicting interests at trial; neither do appellants. Moreover though, neither respondents, nor the trial or appellate courts have provided any authority that would allow it. Klemm further states that "commonsense dictates that it would be unthinkable to allow dual representation"; yet the appellate court [Klein] amazingly asserts appellants' "conflict argument [is] incomplete" and "lacks merit".**

The fraud committed by Nelson, Klein, the State Bar and this Court in throwing

"More specifically on point is Codiga v. State Bar (1978) 20 Cal.3d 788, . . . While Codiga involved fraudulent conduct, the **Supreme Court** in that case **broadly stated that** "An attorney representing clients with divergent interests in the same matter, **must disclose to his clients all facts and circumstances which may aid them in making a free and intelligent choice of counsel.**" (Citations.) [7]

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out the Ornelas case and in failing to harshly condemn and punish the egregious misconduct committed by Greene and Belli, is shocking and deplorable. It is the commission of treason against their judicial oaths, their offices and on the people of the State of California. It is clear that the California legal system is corrupt. In fact, the fraud is so blatant, so grave and so contrary to the purpose of law and justice, one has to conclude that they have conspired with Greene and Belli, and among themselves, to cover up this misconduct. (See verified accusation against Nelson, exhibit 10a and 10b, p. 109-111). No other conclusion is possible.

[7] **Fraudulent conduct? That was what this Supreme Court was told that attorneys Greene and Belli had committed against their clients Ms. Ornelas and Ms. Castro, in APRSC, S026070 at page 12:**

**"As stated in Ball v. Posey (1986) Cal. App. 3d 1214, 1215:**

> **'At trial, Posey admitted that he had never advised Mrs. Bell to obtain separate counsel when his name appeared as the joint tenant on her bank accounts. However, "the duty of a fiduciary embraces the obligation to render a full and fair disclosure to the beneficiary of all facts which materially affect his rights and interests." (Citation). Even the lack of full disclosure will amount to fraud because the fiduciary's obligation is affirmative. The attorney must demonstrate that the client was fully informed on all matters to any transaction between them.5 (Citation). Posey failed to do this.'**

"Because the duty to avoid conflicts under former Rule 5-102(B) arises at the outset of the employment when there has been little if any opportunity for investigation into the merits of the case, the intent of the rule is clearly prophylactic.[8]

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"5 Both Greene and Belli admitted they believed (obviously wrongly) that there was no conflict and that they never advised Ornelas and Castro of the conflict. (See AB p. 19 and 21). Although claiming that he thought there was no conflict, Ford had in fact filed a cross-complaint against driver-tortfeasor Munoz and Ford's attorneys had repeatedly told Greene that there was a conflict. In fact, the conflict was even brought up before the trial judge as the trial began (Case 1) and at the end, just before the case went to the jury. (See ftnt. 9 and Appellants' Brief p.28-34). Greene admitted though that he never did any research on the issue and that he thought that it was "absurd" to get written consent from the clients waiving the conflict. (See AB p. 19 [see also VA, exhibit 2, p. 33, pt. 4]). Belli also admitted he did no research [see VA, exhibit 2, p. 34, pt. 2]. Both greene and Belli thus committed fraud upon their clients, Ms. Ornelas and Ms. Castro. Without knowing of the conflict and its attendant risks and consequences, Ornelas and Castro could never evaluate the settlement offers or the risks of going to trial, which obviously was a main reason for retaining Greene, then Belli."

Yet this Supreme Court did nothing. This Court did nothing when indisputable proof established that Ms. Ornelas and Ms. Castro were repeatedly abused by attorneys Greene and Belli, then by "jurists" Nelson and Klein. And now the State Bar. This Court has betrayed its office, betrayed the law and betrayed the people of the State of California.

[8] The "intent" of the rule is clearly "prophylactic" Webster's Ninth New Collegiate Dictionary (1988) Merriam-Webster Inc. at p. 944, defines "prophylactic" as follows:

"adj [Gk prophylakitokos, fr. prophylaktikos to

Moreover, it is because of the lawyer's greater knowledge of their legal right and remedies that the parties consult the lawyer in the first place. It is the lawyer's duty to secure as large a recovery as possible for the clients and to advise each client with undivided loyalty. (Anderson v. Eaton (1930) 211 Cal. 113, 116-18.) The rule against representing conflicting interest is designed not only "to prevent the dishonest practitioner from fraudulent conduct, [9] but as

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keep guard before . . .] **1**: guarding from or preventing disease **2**: tending to prevent or ward off: PREVENTIVE -- **pro-phy-lac-ti-cal-ly"**

Rule 5-102 was specifically designed to prevent the exact conflict situation that Greene created and ignored in Ornelas v. Ford: Greene represented driver Munoz - the party that caused the accident and the harm to Greene's other clients Ms. Ornelas and Ms. Castro. Rule 5-102 was specifically designed to prevent the exact harm situation in Ornelas v. Ford: Greene ignored the conflict (the Rule, the law), which clearly caused Ms. Ornelas and Ms. Castro to lose the $2,000,000 settlement offer, and their case. The **"intent of the rule** [Rule 5-102] **is clearly prophylactic"**- and clearly **"PREVENTIVE"** And beyond Rule 5-102, attorneys Greene and Belli owed, and breached fiduciary duties, to Ms. Ornelas and Ms. Castro.

Why have laws, if well connected attorneys, our courts and the State Bar can simply ignore them? As this case shows, ignoring the law breeds nothing but fraud, cover up and contempt for the law. (See APRSC, p. 7 Issue I and ftnt. 18, below).

[9]The rule is designed "to prevent the dishonest practitioner from fraudulent conduct"? Fraud is exactly what Greene and Belli committed - repeatedly - upon their "clients" Ms. Ornelas and Ms. Castro. (Ball v. Posey (1986) 176 Cal.App.3d 1209). Not only did the rule and the law not prevent

well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interest, rather than to enforce to their full extent the rights of the interest which he alone should represent. [Citation.]" (Id. at p. 116).

". . . In 1973, the guest statute was declared unconstitutional (Brown v. Merlo (1973) 8 Cal.3d 855), and in the same year, California adopted the doctrine of comparative negligence.[10] (Citation.) **Thereafter, a potential conflict of interest existed between every driver and passenger. . . .[11]**

"By failing to disclose the potential

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Greene and Belli from committing fraud, but several express warnings also did nothing. (See VA, exhibit 2, p. 28-32). Moreover, even when caught in their fraud, Greene and Belli persisted in their arrogance, contempt and belief that they are above the law. (See VA,exhibit 2, p. 33, pt. 4 and p. 34 pt. 2). Sadly, this Supreme Court and the State Bar has made their belief a fact. What actually was prevented? Ms. Ornelas and Ms. Castro getting a fair hearing and their getting justice. What also was prevented? Greene and Belli being disciplined.

[10]Amazingly, Nelson even tried to use the "guest statute" to bar the case. (See 2 RT 397:18-398:1Ornelas v. Greene and Belli, C596304). He then was not only a clearly corrupt judge, but Nelson was also clearly an incompetent judge. (See verified accusation against Nelson, S042217).

[11]This was the gravamen of Ms. Ornelas' and Ms. Castro's case and this is what they repeatedly argued to Nelson (1 RT 35, 2 RT 248-9) Klein (AB p. 10 and APR p. 2, Issue I) and the Supreme Court (APRSC p.7 Issue I). It was then argued to this Supreme Court in CW's 9-9-92 letter to the Supreme Court entitled "BLACK ROBE CRIME - A COVER-UP. It was also repeatedly argued to the State Bar. (See VA,exhibit 2, p. 25 "THE LAW").

"By failing to disclose the potential conflict and to secure the clients' written consent to the representation, among other things, respondent **exposed his clients** to sharing confidences without realizing the potential impact od doing so; to possible delay due to disqualification of their lawyer if an actual conflict developed; **and to reduction of the sources of recovery to the client passenger if any negligence of the client driver were established** but never alleged. These were possible **risks which the clients were clearly entitled to weigh** before hiring a single joint attorney. Indeed, the **concerns regarding potential conflicts in this setting are so strong that at least on state adopted a per se ban** on joint representation of a driver and a passenger in automobile negligence cases unless the driver and passenger were husband and wife or parent and child. (See In the Matter of Petition for Review of Opinion 552 of the Advisory Committee on Professional Ethics (1986) 102 N.J. 194, 206, fn. 3 [507 A.2d 233, 239, fn. 3].) [12] **In California, no such**

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[12] **This exact point was made to this Court in APRSC, S026070 at page 28, ftnt. 14, where it states:**

**"... The New Jersey Supreme Court recognized this as a problem as early as 1968, when it established a directive mandating the trial courts to promptly address conflict situations. As stated in Weinberg v. Underwood (1968) 101 NJ Super 448: 244 A.2d 538, the directive reads:**

> **'The Supreme Court is of the view, because of the conflict of interest in the situation, that an attorney should not represent both the**

bar has been imposed and it is by no means clear that respondent's clients would not have given their consent had he explained the lack of evidence of driver negligence and the risks and benefits of joint representation. However, no such opportunity was afforded them. [13]

"Culpability was properly found by the judge below on all three counts. Nonetheless, under the circumstances, we do not find these violations to be

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driver of a car and his passenger . . . a conflict of interest arises and the Supreme Court has advised the Assignment Judges that the attorney should not be permitted to represent either the driver of his passenger.' 91 N.J.L.J 68 (Feb. 1, 1968).

"Clearly if attorneys Greene and Belli had obeyed Rule 5-102, Klemm and its progeny, this case would not be here, . . . This case shows the obvious need the California Bar and courts have for clarification of the law in this area."

In fact, as the AB, APR, APRSC, CW' 9-9-92 letter, Sklar and Aguiluz readily demonstrate - the law actually was clear and unequivocal in this area, except for Greene, Belli, Nelson, Klein, the State Bar and this Court. "Clarification" was an attempt to be polite when it was still believed this Court had integrity.

[13]Nor was that opportunity ever afforded to Ms. Ornelas and Ms. Castro, because Greene and Belli repeatedly shunned Rule 5-102, the law, and their clients' interests. (See ftnt. 1, above). But even more despicable, is that "that opportunity" was stolen from them through the illegal rulings of Nelson and Klein; then this Court when it also shunned the law, appellants' petition and the rights of Ms Ornelas and Ms Castro. This Court was told California should adopt this "bar" in APRSC, S026070 p. 5 and 28.

serious."[14]

But there is more. The height of hypocrisy and depth of deceit that the State Bar is capable of, is demonstrated by its own further letters in this matter, in response to the application for reimbursement that CW filed on behalf of Ms Ornelas and Ms Castro, with the State Bar's Client Security Fund, Nos. 93-F-14850 and 52. Twice the Client Security Fund has claimed that attorneys Greene and Belli were not even disciplined by the State Bar for their misconduct in this matter. First, in response to the application, the July 17, 1993 1-page letter by Mr. Ed Nelson, State Bar Client Security Fund "Paralegal", denied the application and then stated:

> "In this instance there were problems with attorney performance as you pointed out, however neither case amounted to attorney theft within the meaning of the above-cited rules which would allow for reimbursement. In the final analysis the attorney must receive money or property in his/her pocket belonging to the

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[14]Not serious because there was no evidence that Sklar, unlike Greene and Belli, (1) was repeatedly warned of the conflict, and (2) still intentionally violated Rule 5-102. Moreover, Sklar was able to settle 2-3 cases and was discharged in the 3rd; his clients thus received compensation and suffered no harm. (However, Sklar was disbarred for related violations and Aguiluz was in fact suspended for violating Rule 5-102). Sadly, "no harm" clearly was not what occurred with Ms. Ornelas and Ms. Castro - they lost a $2,000,000 settlement offer and presented wrong/tainted cases - and lost, because of Greene's (later Belli's) ignorance of the conflict and Rule 5-102. Not only was the extent of misconduct committed by Greene (and Belli) then, much more egregious (than in Sklar, Aguiluz), but so was the gravity of the harm that Greene (later Belli) caused to clients Ornelas and Castro. (See VA, exhibit 2, p. 27-32 and at p. 6 "APPROPRIATE DISCIPLINE"). The serious misconduct committed by Greene and Belli requires that they be disbarred. (See p. 18, below).

Of course, then there is the harm caused them by Nelson, Klein, the State Bar and this Court.

client, then commit an act of "theft". **Additionally, rule (b) states an attorney must be disciplined on the underlying complaint. Here that did not happen with respect to the two lawyers involved."**

CW replied with a very detailed July 30, 1993 22-page letter (with exhibits) to Mr. Nelson that indisputably demonstrated that he was not only wrong about - attorneys Greene and Belli not being disciplined (i.e., Ms. Wachter's 3-10-93 letter), but that he also was wrong - in his denial of the applications.

Second, in response to CW's July 30 letter, the Fund's Senior Investigator, Ms. Charlene Johnson wrote a June 24, 1994 1-page letter that stated in pertinent part:

> "In addition, on or about December 2, 1993, the Complainants' Grievance Panel denied your request for further investigation. **Rule 9(b) of the Client Security Fund requires that the attorney(s) be disciplined. Based on this information we are closing your client's applications for reimbursement."**

Well which is it? Did the State Bar **"discipline"** attorneys Greene and Belli? Or did it <u>not</u>?

On July 19, 1994 CW replied to Ms. Johnson with a detailed 9-page letter (with exhibits) informing Ms. Johnson that she - the State Bar - clearly was <u>wrong</u> - <u>again</u>. In pertinent part CW's letter (after setting forth the above quote from Ms. Johnson's letter, then setting forth the 2nd and 3rd paragraphs of Ms. Wachter's March 10, 1993 letter, verbatim, see **VA**, exhibit 1, p. 21) states at page 5-7:

> "Clearly Ms. Johnson, the Bar concluded that Greene and Belli violated Rule 5-102 and then <u>disciplined</u> them (albeit grossly

insufficient and inadequate) with a private warning letter. Must I **again** show you that a private warning letter is a form of State Bar discipline? For your edification I enclose a copy of the State Bar's discipline chart entitled **"DISCIPLINE KEY"**, that appears in the June 1993 issue of California Lawyer at page 80 and that appears on page 25 of the April 1994 California Bar Journal. You will note Ms. Johnson that the term **"Private Reproval"** appears on both charts. Clearly Greene and Belli both violated Rule 5-102; clearly they both were disciplined (again though grossly insufficient and inadequate) with a private **"Warning Letter"**. Why Ms. Johnson do you, the Fund, the Bar ignore your own Rules? Ignore your own letters? Ignore your own conclusions?

"Now, based on this corrected information Ms. Johnson, I suggest that you, the Fund, the Bar **again** consider the applications of Ms. Ornelas and Castro and this time correctly conclude that they are in fact entitled to reimbursement."

* * * *

"Finally Ms. Johnson, I suggest that you, the Fund, the Bar read Charles Saleeby v. State Bar (1985) 39 Cal.3d 547, where the Supreme Court stated that the Bar must provide due process to clients seeking reimbursement from the fund, that clients (citizens) must be given written reasons for a decision to deny a claim and clients have the right to appeal the decision to the Superior Courts.

"Due process? I must bring up your, the Fund's, the Bar's Rule 2 again

and note the following statements from Rule 2:

> "Any payments from the Fund shall be **discretionary** and shall be subject to these rules and **such other regulations and conditions as the Board shall prescribe**. . . . [P] All payments from the Fund shall be **of grace and not of right** and shall be in the **sole discretion of the State Bar** of California. No client or member of the public shall have any right in the Fund as a creditor, third party beneficiary, or otherwise. . . ."

"Discretionary, of grace, not of right, sole discretion of the State Bar. Due process? No. How about hypocritical, arbitrary, whimsical, divine right (wrong) of the State Bar? I also note that your letter failed to advise that Ms. Ornelas and Ms. Castro could appeal your **"of grace"** denial of their applications." CW concluded that letter, requesting that Ms. Johnson provide a copy of the letter to State Bar President Marrow, the State Bar Board of Governors Chairman and Judge Alarcon (see below), and that she reply in 14-days. It is now over 100-days and still nothing.

The above indisputably establishes that the State Bar is a lawless rogue entity that no longer is concerned about disciplining well connected miscreant attorneys. In fact it is clear that it will aid those miscreant attorneys and it is no longer concerned with protecting the people of the State of California.

It also indisputable that this Court has let the State Bar run wild.

**FURTHER EVIDENCE OF FRAUD BY THE STATE BAR**

But the State Bar, the CGP, doing nothing about well connected miscreant attorneys, actually is no surprise. In fact doing nothing is a regular custom and practice of the State Bar, the CGP. For example, Professor Robert Fellmeth's September 20, 1991 **"Final Report"** states at page 9:

> "Despite recent staff increases, a choking backlog has developed in CAR [Complaint Audit and Review Unit]. As of December 1989, CAR had 1,066 unscreened cases pending before it, up 505 from the previous six months. At this time, we are distressed to report that the backlog has jumped **even more**. The open cases before the CAR include over 2,700 cases, two-thirds of them inquiries closed by Intake, and the remaining one-third more serious cases passing through intake but closed by OI. Almost half of the closed inquiries still open within the CAR backlog are more than one year old at this point. The OI-dismissed cases are generally older. [P] . . . **The backlog is growing, not shrinking**. However, in order to enable the Panel to make considered decisions, and recognizing that it is made up of volunteer appointees who meet once a month, CGP has necessarily limited itself to consideration of a defined number of cases per month, . . . this has meant CGP consideration of 30-60 cases per meeting outside the consent calendar. [P] . . . **we do not see them solving this problem.**" (See also **VA**, at 9, ftnt. 8 and at 35, ftnt. 9).

A more recent example, is the State Bar's August 27, 1994 **"REPORT OF THE DISCIPLINE EVALUATION COMMITTEE TO THE BOARD OF GOVERNORS"**,

chaired by Federal Appellate Judge Arthur Alarcon that recommended elimination of the CGP at page 10, because:

> ". . . The present system, however has the appearance of being biased in favor of attorneys in the eyes of persons who complain about unprofessional conduct. Persons who seek review before the Complainants' Grievance Panel of a determination that formal disciplinary proceedings should not be initiated **are doomed to disappointment in approximately 99% of their appeals."** (Also see report at 25, 29-31).

**"99% doomed"**? That simply is incredible. It defies common sense. It flies in the face of reason. That **99%** of appeals are **"doomed"** - is indisputable proof that the State Bar is rigged, corrupt and continues to commit repeated acts of fraud on the public by covering up wide spread attorney misconduct. The proof is clear that the State Bar is a lawless rogue state entity out of control and that it has betrayed the public trust.

Furthermore, at page 5, under **"INFORMATION FROM CONSUMERS"**, the Discipline Evaluation Committee Report indicates that Prof. Robert Fellmeth (among others) was solicited for his comments. (See also report at p. 16-18). The report continues:

> ". . . The Committee also met jointly with the **entire Complainant's Grievance Panel** and reviewed their Fifth and Sixth Annual Reports, as well as the responses to those reports prepared by the Office of Chief Trial Counsel." (at 5).

One has to wonder then, if the CGP told Judge Alarcon about **this VA** - that was then pending with this Court, that charged that the State Bar's, the CGP's and Ms. Wachter's - investigation of this matter was a **"sham"** and "a

fraud upon the public"? (See VA, exb. 2, p.22).

And this VA also charged that:

> "The refusal by the Bar to address these offenses and to punish these attorneys is proof beyond doubt that the Bar is corrupt. The involved Bar personnel have wilfully failed to perform their duty and thus have violated the law. (See Gov. Code, sec. 1222). The Bar must be investigated and the involved individuals punished." (VA, p.8).[15]

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[15]Well one need not wonder, because on 7-19-94 CW sent Judge Alarcon a copy of the VA. Judge Alarcon's reply? He looked the other way and stuck his head in the sand. His 7-27-94 1-page, 2-paragraph letter states:

> "I have reviewed the material that you sent to me. It deals with a matter that is currently -- apparently before the Supreme Court of California and the Judicial Performance. Matters before those two bodies are not within the narrow purview of the State Bar's Discipline Evaluation Committee. [P] In your letter, in a post script, you ask that I send a copy of this letter to Judge David M. Rothman. I decline to do so. I am returning all of the material you sent me so that you may direct it to the appropriate person or persons."

"Not within the purview"? Any reading of the VA shows indisputable corruption committed by the State Bar in its handling of the complaints against Greene and Belli - and grave judicial and attorney misconduct ignored by this Court. It is clear that Judge Alarcon not only did not evaluate the VA, but he did not evaluate what really is going on at the State Bar. For example, his comment: "direct it to the appropriate person or persons". Who is that? Certainly not this Court, because the VA asserts (at p. 11) that this Court itself has a conflict of interest presiding over the VA; moreover Judge Alarcon was also provided a copy of CW's 3-18-94 complaint to the Commission on Judicial Performance about (inter alia) Chief Justice Lucas ignoring that conflict and Business & Professions Code, section 6109 in this VA. Judge Alarcon however was partly correct, the CGP is worthless. (CW then went ahead and had those documents delivered to Judge Rothman, with a copy of Judge Alarcon's letter; CW is still waiting for a reply). "Right person"? CW has written to Attorney General Lungren five (5) times (beginning on 6-16-93), requesting that his office investigate the State Bar. Nothing. Last was CW's 7-8-94 letter to Attorney General Lungren. CW is still waiting for a reply.

Whether Judge Alarcon and his committee were **"told"** of this **VA** really does not matter, because it is clear that he/they were predisposed to cover for the State Bar anyway: **"99% doomed"** and he claims that only **"has the appearance of being bias in favor of attorneys"**. Not even a child would believe that. Appearing in the October 1994 issue of the California Bar Journal at p. 6, is an article by Professor Fellmeth (recall his above report as the Bar's Special Discipline Monitor) entitled **"Alarcon report: Out at the Plate"**, which states:

> "The Alarcon Committee, within its assigned task, has hit several dozen singles and perhaps one triple: its primary structural recommendation, the idea of an Office of Consumer Advocate with broad jurisdiction over intake and complaint audit and review. [P] **The Bar's regrettable structure places the prosecutor of attorney wrongdoing under the jurisdiction of a board controlled by persons elected by other attorneys.** The office suggested by the committee addresses the underlying need of any **cartel system to have a check originally from the outside tribe.** [P] Currently the bar's **Complainants' Grievance Panel** provides some check, but its jurisdiction focuses on reviewing individual complaints that were dismissed early on over the objection of those reporting them. . . . [P] **But the committee undermined its most promising suggestion with the instruction that the position report directly to the executive director of the Board of Governors.** If one

removes the single relatively independent check extant (the Grievance Panel), it should not be replaced with a cartel-subservient creature. In its one extra base hit, the committee has been thrown out going for home."

Thrown Out. That's thrown out again. That is because Professor Fellmeth made these exact same criticisms, and more, in his 1991 "Final Report" as the State Bar's Special Discipline Monitor. (See VA, "HISTORY OF NEGLECT BY THE BAR", P. 9, ftnt. 8). That is because the "Alarcon Report" itself states at page 54:

"Under the present system, disbarment is relatively rare, and it is meted out only for the most egregious misconduct . . . Yet under the current system, a disbarred attorney can apply for reinstatement after three (3) years, and resources must then be expended considering such applications. When a successful, disbarred attorneys are given another chance to victimize unsuspecting clients. If the public were aware of the fact that disbarment does not really mean disbarment, it would question the seriousness of the State Bar's resolve to cleanse the legal profession of the relatively few attorneys whose misconduct casts all attorneys in a bad light. * * * [P] . . . an attorney should be eligible for permanent disbarment where he has engaged in particularly reprehensible misconduct, e.g., embezzlement of client funds, perjury, suborning perjury, knowingly making false statement to the court with intent to deceive, and using his position as a lawyer to commit fraud on his clients or the public." (at 55).

It is clear that the State Bar is largely corrupt and is not capable of cleaning itself up. It is also clear that this Supreme Court has let the State Bar run wild and that it, also is not capable of curbing the miscreant State Bar.[16]

## CONCLUSION

What has happened to the California legal system? What has the American legal system become? They have betrayed truth and justice. A public calling and a sacred public institution - our law - have been turned into a mostly unprincipled, corrupt business - THE BETRAYED PROFESSION: Lawyering At The End Of The Twentieth Century, (1994) by Sol M. Linowitz, Charles Scribner's Sons.

But the betrayals that have occurred in the Ornelas cases, by attorneys Greene and Belli, by jurists Nelson, Klein, the State Bar, and this Court, are even beyond Mr. Linowitz's deepest

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[16]In fact, this Court has aided the State Bar's fraud. See CW's 11-1-94 letter to Supreme Court Administrator and Clerk - Robert Wandruff, charging the Supreme Court with obstruction of justice, for refusing to answer simple "public" inquiries about verified accusations. In fact Mr. Wandruff's office incredibly claimed that it "keeps no statistics" on verified accusations, despite being the court of original jurisdiction. (See In re Walker (1948) 32 Cal.2d 488 and Business & Professions Code, section 6108). CW therefore was compelled to research the issue and discovered that the Supreme Court has aided the State Bar's "dooming" of CGP appeals, by not granting a single verified accusation for years. (A verified accusation is an appeal to this Court, of a CGP denial [again that occurs 99% of the time] of an appeal to CGP, of a Bar complaint that was improperly denied/investigated). That was confirmed by reporters with the LA Times and Daily Journal CW conferred with. CW also Sheppardized In re Walker, above and found only two (2) cases referenced, but neither dealt with verified accusations. Mr. Wandruff's office also granted the State Bar's frivolous request to dismiss the verified accusation against Nelson, S042217, as "premature", despite numerous detailed acts of obstruction of justice by the State Bar being set forth in the verified accusation. Recall Judge Alarcon's comment stated in ftnt. 15, above, "direct it to the appropriate person or persons"? Clearly that has not been this Supreme Court. (See also verified accusation against Nelson, exhibit 11, p. 112).

System: A Gang Rape of Lady Justice[17], the Castration of Lord Truth, the murder of the law".[18]

Submitted with grave concern,
GARY L. ZERMAN

cc

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[17]See attached exhibit A - picture of Melvin's Belli's ornament, the "scales of justice"; omly Belli has replaced Lady Justice - with the "bird finger". Although this clearly was not the gravest act of misconduct he committed in Ornelas, it probably was one of his most graphic. CW even telling this Supreme Court and the State Bar, that as this state's highest legal officials/offices, some of the public might surmise that Belli was pointing **"at them"**, could not get this Court or the State Bar, to take any action against Belli. Why?

[18]The verified accusation against Nelson, S042217, concluded with the following quoate:

> **"Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it inviteseveryman to become a law unto himself; it invites anarchy." (Justice Brandies in Olmstead v. United States (1928)277 U.S.438).**

CW's 9-9-92 letter "BLACK ROBE CRIME - A COVER-UP" to this Court, and this **VA**, in detail demonstrate just how contagious - it is a plague. (See S042217, exhibit 10, p. 111, ftnt. 2 re "terminal demise"). Perhaps though there is some hope. As referenced in the **VA**, at p. 16, there was the lone dissenting opinion of Justice Kennard in Howard v. Babcock (1993) 6 Cal.4th 409, that placed "Protection of the public and preservation of public respect for the law . . ."as a paramount concern - still consistent with this Court's "principal concern" proclaimed in Beery, above at p. 2. And now there is a new justice on the Court. Hopefully, these two (2) justices will not be part of "the ole boy" - or a "new girl" (Klein, Morrow), type networks, that for too too long, have protected miscreant well connected members of the California State Bar - and a miscreant State Bar. Hopefully the darkness will be dispelled, and it is a new day for the California legal system.

SUPREME COURT
FILED
JAN 18 1995
Robert Wandruff Clerk
DEPUTY

S037066

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

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In Re the Accusation of GARY L. ZERMAN
Against **Certain Attorney(S)**

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Petitioned DENIED

(Signature) Lucas
Chief Justice

**LAW OFFICE OF GARY L. ZERMAN**
**5821 Hickory Drive, Suite D**
**Agoura, California 91301**
**(818)991-7108**
**(805)251-6100**

June 6, 1994

Mr. Robert F. Wandruff
Court Administrator and
Clerk of the Supreme Court
303 2nd Street
South Tower, 8th Floor
San Francisco, CA 94107

**Re:** **Verified Accusations of Attorney Misconduct - Obstruction of justice by the California Supreme Court.**

Dear Mr. Wandruff:

This letter follows my 4-8-94 letter to Ms. Kim McCready (Office of Communications, State Bar of California) concerning my attempts to obtain information about **verified accusations of attorney misconduct** filed in the California Supreme Court. Recall that you and Mr. Donald Day (Assistant Director, Legal Dept. of the Administrative Office of the Courts, Judicial Council of California - he is located in your building) were copied with that letter.

In response to my 4-8-94 letter, enclosed find copies of Mr. Jeffrey Gersick's (Secretary, State Bar of California) 5-3-94 letter and Mr. Day's 4-28-94 letter - each stating that their respective office/entity **"does not maintain or provide"** or **"does not have"** information concerning **verified accusations of attorney misconduct** filed in the Supreme Court.

Hence Mr. Wandruff, I must once again request the Supreme Court to provide me this information. As requested in my 2-23-94 and 4-5-94 letters to Ms. Tommie O'Bryant (Deputy

Clerk in your LA office) please provide:

> "a list of all **verified accusations** of misconduct that had been filed against attorneys in the California Supreme Court during the last 18 months, and the disposition of those verified accusations."

Mr. Wandruff, as I have previously told Ms. O'Bryant and the rude Mr. Barrow (also of your office), I will not accept the representation that the Supreme Court does not have/keep any statistics on **verified accusations**. That claim simply is not credible. Verified accusations are filed originally in the Supreme Court; it is axiomatic that to maintain its calendar the Court must keep track of these matters in some fashion. Common sense and basic organization at a minimum would require that a separate list of these matters be kept. A competent Supreme Court would keep much more.

Furthermore, to have any credibility the Court must keep this information simply to uphold its claim that:

> "'Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standards for attorneys.' (Citations.)." Beery v. State Bar (1987) 42 Cal.3d 806, at 815.

How can the Court on the one hand make such a statement - then with its other hand claim that it does **"not have/keep any statistics on verified accusations"**? Need I remind you that the basis for filing a **verified accusation** is that the State Bar has failed to properly investigate and properly discipline serious attorney misconduct? Surely, the Supreme Court has enough **"concern"** about **verified accusations** that its keeps a list of these matters.

Moreover, I have exhausted the nonsensical "goose chase" your office sent me on to the

State Bar and Judicial Council and have demonstrated that they also claim they do not have the information. If the Court does not - who does? All the money expended and all the people employed by the State Bar, Judicial Council and Supreme Court - and none of you think it is important to keep track of bandit attorneys that are being protected by a corrupt State Bar? Pitiful, simply pitiful. Assuming that it is true that the Supreme Court does not maintain such information, it is clear that it now must start.

Perhaps rather than taking all those **"trips"** abroad, Chief Justice Lucas should have stayed at home and directed his personnel to accomplish such useful tasks as keeping track of **verified accusations**? It is clear that it is time that started Mr. Wandruff.

Mr. Wandruff please now also consider my request as a formal request for this information under the Public Documents Act.

Mr. Wandruff, the reason that I am seeking this information is that it has come to my attention that the Supreme Court is not doing its duty and is not following the law regarding **verified accusations**. In particular, the Court is ignoring Business & Professions Code, section 6109, which states:

> "**Upon receiving** the accusation, the court **shall make an order** requiring the accused to appear and answer it at a specified time, and shall cause a copy to be served upon the accused at least five days before the day appointed in the order."

It is my understanding that the Court has taken no action for over 13-months on some **verified accusations** - and in some cases maybe even longer. Furthermore, as you are aware on 12-30-93 I filed a **verified accusation** (Case no. S037066) against attorneys Browne Greene and Melvin Belli - each a past president of the California Trial Lawyers Association (CTLA). It

is now almost 6-months later and the Court has not done anything, has not ordered **"the accused to appear and answer"**. **"Upon receipt"** seems pretty clear to me Mr. Wandruff. How about you? Recall in my 2-23-94 letter to your office I requested that you notify me if there were any other particular rules or procedures. Your office responded, but provided nothing about extending time for the Court to act.

The **"principal concern"** that the Court enunciated in Beery, above, clearly has hollow ring here.

Mr. Wandruff what is going on? Why has the Supreme Court not taken any action on my **verified accusation?** Why is the Court ignoring the law - ignoring section 6109? Ignoring Beery?

The information I have requested will show that besides protecting attorneys Greene and Belli regarding the **verified accusation** that I filed, the Court has done the same for other influential attorneys and members of the legal community. Remember Marvin Mitchelson? (See also enclosed copy of 3-18-94 front page LA Daily Journal article entitled **"Discipline Case of S.D. Judge Sealed by Court"** re Superior Court Judge Dennis Adams). It is clear that the Supreme Court is not following the law here. It is clear that the Supreme Court is obstructing justice here.

The acts of serious misconduct committed by attorneys Greene and Belli are indisputable; the law is clear they must be disbarred or suspended for an extended period. (See the **verified accusation** Case no. S037066, particularly exhibit 2 - my 3-25-93 letter to the State Bar and see Beery). Yet the Supreme Court has not acted? Why has the Supreme Court not ordered these attorneys to **"appear and answer"**? Why is the Supreme Court letting these bandit attorneys continue to run loose? Why is the Supreme Court not investigating the State Bar personnel who illegally gave them a pass. Why is the Supreme

Court not doing its duty to protect the public here?

It appears Mr. Wandruff that your office is also guilty of obstructing justice by: failing to provide me the public information I have sought; by failing to answer my inquires about public matters; by misdirecting me on "goose chases" to other entities; and by not reporting the illegal actions of the Court regarding **verified accusations**. (See Government Code, section 1222). In fact Mr. Wandruff it appears that your office has attempted to cover them up. Why are you protecting these lawbreakers? Why are you not doing your duty to protect the people?

Need I remind you that you work for the people of the State of California, at the Supreme Court - and not for the Supreme Court justices? Need I remind you of what happened and what might happen to those in the Clinton Administration - White House Staff, who have failed to recognize that they work for the people of the United States - and not personally for Mr. Clinton? Some have been fired, some have been called before the grand jury and some may be found to have obstructed justice. Recall Watergate Mr. Wandruff? How about Dan Rostenkowski?

Need I remind you that today is the 50th anniversary of D-Day? Yet look what we have become. Mr. Wandruff do your job, do your duty. Mr. Wandruff I hereby request that you report this matter to the State Attorney General for investigation. Or perhaps you should report the matter to the U.S. Attorney's Office. Mr. Wandruff please send me a copy of your report/request.

Finally Mr. Wandruff, I would request that you (the Supreme Court) also answer the following questions for me:

1. Why the Supreme Court has not yet ordered attorneys Greene and Belli to answer and appear on the **verified accusation** I filed on 12-

30-93? (Your usual standard "Your case is pending" - will not suffice - I am accusing the Supreme Court of obstructing justice here).

2. Why Chief Justice Lucas has yet to recuse himself from presiding over the **verified accusation** due to the conflict of interest he has concerning the verified accusation, as set forth in the verified accusation? (Remember the prosecution of Bill Honig for conflicts of interest? Again "Your case is pending" -will not suffice).

3. Under what authority did the Supreme Court act when it issued the order to seal the Adams case, In re inquiry Concerning a Judge No. 104, Case No. S037475?

Mr. Wandruff please provide me all of the above requested information within the next 14-days. Should you have any questions please feel free to call or write.

Very concerned,

GARY L. ZERMAN

GLZ/ms
cc

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| MARIA ORNELAS, FABIOLA CASTRO AND GARY ZERMAN,<br><br>Plaintiffs,<br><br>v<br><br>JUSTICES OF THE SUPREME COURT OF CALIFORNIA - MALCOLM LUCAS, STANLEY MOSK, EDWARD PANELLI, JOYCE KENNARD, ARMAND ARABIAN, MARVIN BAXTER, & RONALD GEORGE; JUSTICES OF THE APPEAL COURT, 2ND DISTRICT, DIV. 3 - JOAN KLEIN, WALTER CROSKEY, & J. DANIELSON; SUPERIOR COURT JUDGE HENRY NELSON,<br><br>Defendants. | No. CV 92 7246 RG(Sx)<br><br>ORDER GRANTING FRCP 12(b)(1) MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION |

On January 25, 1993, the following motions by defendants Malcolm Lucas, Stanley Mosk, Edward Panelli, Joyce Kennard, Armand Arabian, Marvin Baxter and Ronald George came on for hearing before the Court:

1. Motion pursuant to FRCP 12(b)(1) and



12(b)(6) to dismiss the complaint on the grounds

that this court lacks subject matter jurisdiction, and that the complaint fails to state a claim upon which relief can be granted, the suit being barred by the Eleventh Amendment;

2. Motion pursuant to FRCP 12(b)(1) and FRCP 12(b)(6) to dismiss the complaint on the grounds that the court lacks subject matter jurisdiction, and that the complaint fails to state a claim upon which relief can be granted, in that the complaint seeks review of state court decisions, such relief if available in federal court at all being reserved to the United States Supreme Court.

3. Motion pursuant to FRCP 12(b)(6) to dismiss the complaint on the ground that the complaint fails to state a claim upon which relief can be granted, in that the complaint seeks damages for judicial acts for which these defendants are immune from liability.

After review of the Complaint and the motions, and the written submissions in support of and in opposition to the motions, and consideration of the oral arguments, the Court GRANTS the motion to dismiss pursuant to FRCP 12(b)(1) for lack of subject matter jurisdiction.

Facts

For the purposes of the motions, all factual allegations of the Complaint are deemed to be true. Matters of opinion and legal conclusions contained in the Complaint are not deemed admitted for the purpose of the motions. The allegations of the complaint are summarized as follows:

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The lawsuit is brought under Title 42 U.S.C. §1983 for redress of deprivations committed under color of law by California judges of plaintiffs' rights, privileges and immunities secured by the Fifth and Fourteenth Amendments.

Plaintiff Zerman is a California licensed attorney and is attorney for plaintiffs Ornelas

and Castro in "Ornelas v. Greene, Belli, et al;" Los Angeles County Superior Court Cast No. C596304 as well as the present case. At all times mentioned in the complaint defenda Lucas, Mosk, Panelli, Kennard, Arabian, Baxter and George were Justices of the California Supreme Court; defendants Klein, Croskey, and Danielson were Justices of the California Appellate Court; and defendant Nelson was a Superior Court Judge. Plaintiffs seek relief from the federal court for deprivation of plaintiffs' civil rights by the California judicial system when the defendant judges presided over the trial and appeal of the aforementioned lawsuit, which sought recovery from two prominent California attorneys who committed blatant legal malpractice by ignoring a fundamental conflict of interest.

On August 30, 1976 a 1963 Ford pick-up truck being driven by Ventura Munoz was involved in a single vehicle accident which killed plaintiff Ornelas' nine day old baby and injured plaintiffs Castro and Ornelas, all of whom were passengers in the truck. Attorney Browne Greene filed a lawsuit against Ford on behalf of the driver Ventura Munoz, her husband Jose, and plaintiffs herein Ornelas and Castro. During jury deliberations, Ford made a two million dollar settlement offer which Greene rejected. The jury returned a verdict for Ford, and the judgment thereon was affirmed by the Court of



Appeal. Plaintiffs received nothing.

On or about June 10, 1992, the law offices of Melvin Belli filed a complaint on behalf of the losing plaintiffs in the Ford case against attorney Greene and his firm for malpractice. Later the Belli firm also substituted in as attorney of record for plaintiffs in the first suit against Ford, and handled the appeal to its conclusion.

On February 25, 1985 attorney Belli took the malpractice case against attorney Greene to

trial. Prior to trial, settlement offers were made to plaintiffs that totalled around $550,000, which attorney Belli recommended to plaintiffs that they reject; Belli though denied any that there was ever any settlement offers or demands (sic). None of the offers were accepted and on March 25, 1995 the jury returned a verdict in favor of defendant Greene. No appeal was taken and plaintiffs received nothing.

On April 16, 1986, plaintiffs herein Ornelas and Castro, represented by plaintiff herein Zerman, filed a third lawsuit, this time against both Greene and Belli, asserting theories of malpractice and focusing upon the failure of both to recognize, advise of, and assert the fundamental conflict of interest that existed between plaintiffs herein and the driver of the Ford pick-up involved in the original accident, Ventura Munoz. On June 19, 1990 the case against Greene and Belli came to trial before defendant Judge Nelson.

The purported trial was a sham proceeding -



during which Judge Nelson totally failed to comport himself as a judicial officer. Judge Nelson was a renegade rogue jurist who should have been removed from the bench by the Commission on Judicial Performance (sic) a long time before plaintiffs had to suffer his wrath. Judge Nelson did not allow the case against Greene and Belli to go to the jury.

Plaintiffs herein Ornelas and Castro, represented by plaintiff herein Zerman, appealed the judgment from defendant Judge Nelson's trial court to an appellate court panel composed of defendant Justices Klein, Croskey and Danielson. From the moment the hearing began, Justices Klein and Croskey demonstrated a hostile demeanor, a total lack of concern for the law and attempted to harass and intimidate attorney Zerman. The judgment against plaintiffs herein Ornelas and Castro was affirmed.

Rehearing was denied by the Court of Appeal

and petition for hearing was denied by the Supreme Court. The denial of hearing by the defendant Supreme Court Justices was a sham, thereby ratifying and consciously attempting to protect and cover-up the wrongful/fraudulent acts of attorneys Greene and Belli, and the wrongful/illegal acts of the defendant judges. On September 9, 1992 attorney Zerman sent a letter to the Supreme Court Justices demanding that they explain their failure to address the obstruction of justice that had occurred and the violations of plaintiffs' civil rights. The letter further advised that if the Supreme Court failed to correct the wrongs done here to plaintiffs Ornelas and Castro, that plaintiffs would be forced to file this present action.

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WHEREFORE, plaintiffs pray for judgment against defendants, and each of them as follows:

1. General damages in an amount to be proven;

2. Incidental damages in an amount to be proven;

3. Punitive damages in an amount to be proven;

4. Reasonable attorney fees and the costs for the prosecution of the present action;

5. Prospective injunctive relief as set forth above; and

6. Such other and further relief as the Court deems proper and just.

Discussion

The complaint asks this federal district court to review and overturn the decisions of the Los Angeles County Superior Court and/or the California Court of Appeal and Supreme Court, and to award damages against the judges who made those decisions; this federal district court lacks jurisdiction to do so (D.D. Court of Appeals v Feldman (1982) 460 U.S. 462 [75 :.ed 2d 206, 103 S. Ct. 1303]). Federal court review of state court judicial decisions is available only in the United States Supreme Court (28

U.S.C. §1257; Atlantic Coast Line R. Co. v Locomotive Engineers (1970) 398 U.S. 281, 296; Rooker v Fidelity Trust Co. (1923) 263 U.S. 413, 415, 416).

## Conclusion

For the reasons stated above, the Court GRANTS the motion to dismiss for lack of subject matter jurisdiction. The Court declines to rule on the other motions.

IT IS SO ORDERED.

Dated: 2-9-93 Richard Gadbois
United States District Judge

Second Appellate District, Division Three,

No. B052519

S026070

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

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MARIA D. ORNELAS Et Al., Appellants

vs.

SUPREME COURT
FILED
JUN 10 1992
Robert Wandruff Clerk
DEPUTY

R. BROWNE GREENE Et Al., Respondents

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Appellants' petition for review DENIED.

(Stamped) LUCAS

Chief Justice

SUPREME COURT NO. _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

| | | |
|---|---|---|
| MARIA D. ORNELAS AND FABIOLA CASTRO, | ) | COURT OF APPEAL NO. B052519 |
| APPELLANTS | ) | SUPERIOR COURT NO. C596304 |
| vs. | ) | |
| R. BROWNE GREENE, et al. | ) | |
| RESPONDENTS | ) | |

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY

JUDGE HENRY P. NELSON, RETIRED

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# PETITION FOR REVIEW
BY APPELLANTS ORNELAS AND CASTRO
FOLLOWING THE NONPUBLISHED DECISION
OF THE COURT OF APPEAL
SECOND APPELLATE COURT, DIVISION THREE

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Gary L. Zerman, Esq.
LAW OFFICES OF GARY L. ZERMAN
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(818)506-5185

I

ATTORNEY GREENE INDISPUTABLY COMMITTED FRAUD UPON AND WILLFULLY BREACHED MANDATORY FIDUCIARY DUTIES OWED TO APPELLANTS ORNELAS AND CASTRO WHEN HE FAILED TO RECOGNIZE, ADVISE OF AND ASSERT THE CONFLICT OF INTEREST.[19] BOTH THE TRIAL AND APPELLATE COURTS HERE HAVE IGNORED GREENE'S WRONGFUL CONDUCT AND AMAZINGLY STATE THAT SUCH CONTENTIONS "LACK MERIT."[20]

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19Both attorneys Greene and Belli admitted that they thought (of course incorrectly) that there was no conflict. (Appellants' Brief page 19 and 21). Independent and unrelated to any asset situation of driver-tortfeasor Munoz, Attorney Greene owed clients Ornelas and Castro fiduciary duties to recognize, advise of and assert the conflict of interest with Munoz. Attorney Greene's wrongful conduct therefore violated California Rules of Professional Conduct, Rules 4-101, 5-101 and 5-102. (Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 898.) These rules are mandatory and conclusive regarding the attorney's ethical and fiduciary duties to the client; they cannot be changed by expert testimony and judicial notice of violations is compelled. (Day v. Rosenthal (1985) 170 Cal.App. 3d 1125, 1147). Defendants Belli are also guilty of the same conduct; moreover, defendants Belli are also guilty of not prosecuting this case against Greene, instead of the case he did. Appellants clearly established that both Greene and Belli owed and breached fiduciary duties to appellants. Appellants thus established a prima facie case and their case should have gone to the jury. The directed verdict in favor of Belli was improper and must be reversed. (Gibson v. So. Pacific Co. (1955) 137 Cal.App.2d 337, 346; Lawless v. Calaway (1944) 24 Cal.2d 81, 89; also see issue III).

20At page 10 of its decision the appellate court states: "Although we find the contentions raised by Ornelas and Castro in the appeal to lack merit, we decline Belli's request to impose sanctions for prosecution of a frivolous appeal." This statement is shocking. Attorneys Greene and Belli breached fiduciary duties and committed fraud against their clients, in Case 1 and case 2 respectively. In Case 3 Judge Nelson committed numerous blatant acts of judicial misconduct and had to step down from the bench rather than face a disciplinary hearing. (See fnt. 13 and Appellants' Brief p. 2 and 38). The

The conflict of interest between passengers Maria Ornelas and Fabiola Castro with negligent-driver Munoz in the underlying personal injury action (Case 1) was blatant, pervasive and all consuming.

(This was the title page and p. 7, to Ornelas v. Greene/Belli, S026070, the petition to the CSC. These pages also were exhbits 1(a) to petitioner's complaint against Chief Justice Lucas filed with the Cal. Commission on Judicial Performance).

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conduct by these attorneys and by Judge Nelson violated the rights of Ms. Ornelas and Ms. Castro on three occasions prevented them from receiving a fair trial. Clearly, these allegations **do not** "lack merit." If these contentions "lack merit" the legal system is in real trouble, if not in a condition of terminal demise. For to proffer such a comment is nothing but blind arrogance, ignorance of the law and the duty to follow it and a pitiful declaration that the rights and lives of clients and litigants are actually incidental to the legal system and what is paramount is the unbridled discretion of attorneys and courts to simply do as they please. (See ftnts. 4(d), 5, 9 12 and 15).

**LAW OFFICE OF GARY L. ZERMAN**
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**(818)991-7108**

September 9, 1992

Chief Justice Malcom Lucas and
The Associate Justices of
The Supreme Court of the
State of California
303 Second Street
South Tower, 8th floor
San Francisco, CA 94107

Re: Ornelas and Castro v. Greene/Belli et al.

**Superior Court Case No. C596304**
**Court of Appeal Case No. B052519**
**Supreme Court Case No. S026070**

**BLACK ROBE CRIME - A COVER-UP**

Attention Chief Justice Lucas and Associate Justices:

It is with great sadness that I write this letter, but YOUR failure to do YOUR duty leaves me no choice. As a member of the Bar who has taken an oath to honor and follow the law and an oath to faithfully represent my clients I must write this letter. I am also compelled to write this letter simply as a concerned citizen wo sees truth and justice being assaulted: assaulted by their caretakers, the California legal system. this letter will serve as an **indictment** of an institution with attitudes of blind arrogance and forgotten purpose; an institution therefore no longer able to police and discipline itself.

On the afternoon of August 30, 1976 Maria Ornelas, her 9-day-old son Jesus, and Fabiola Castro were innocent passengers riding in a

pickup truck. That ride turned into a tragedy when the driver took a right turn too sharp and too fast, causing the truck to tip over on its left side. Baby Jesus, was thrown out the left window, his little body and skull were crushed by the truck as it slammed against the pavement; he was killed. the truck then quickly caught fire with Maria and Fabiola still trapped inside; they both were horribly burned over most of thier bodies. After being pulled from the inferno, Maria stood by the wreckage trembling, in pain, in shock, and in horror screamed "My bambino, my bambino."

Indeed, that was a tragic ride. However, unbeknownst to both Maria and Fabiola, over the next 16 years they would take another tragic ride; a never ending ride through a corrupt California legal system. What is most tragic is that the second ride by Maria and Fabiola was clearly unnecessary and clearly preventable. It was a ride that never should have occurred, if only their attorneys and the judges involved in their cases, had simply done their sworn duty to follow the law and had recognized a blatant and obvious conflict of interest.

* * *

It has become common knowledge that the public is dissatisfied and becoming more and more dissatisfied with the legal system. For quite sometime they have held attorneys in quite low esteem. Arguably, with the recent investigations of the 3 - San Diego Superior Court Judges for allegedly accepting gifts form attorneys, the hearings for the selection of a judge in the Reginald Denny case, the trial in the prosecution of the Rodney King case, the sentencing matter by Judge Karlin, the reduced sentence for Michael Milken and the handling of the execution of William Harris, the public may have some reason to feel the same way about the courts.

The injustices that have occurred in Ornelas Case 3, in someways are arguably even

greater than the perceived injustices in the King and Karlin matters. In Ornelas, again the system failed them at every stage and most particularly the courts. Whereas, the King matter got to the jury (at least to the guilt phase); the people were thus involved there and spoke with their verdicts, therefore some justice occurred although some may not like the results. Moreover, these matters had extensive press coverage and were out in the open. Ornelas to the contrary, never got to a jury and was kept from getting there by dishonest judges. The public does not need another reason not to believe in our legal system.

The public must know why you have not addressed the terrible injustices and wrongs that have occurred here. YOU owe them that because although you hold a high office with a lot of prestige, it is still a public office, and YOU are public servants and YOU are accountable to the public. The law does belong to the public. Ms. Rose Bird had to learn that lesson that way. Otherwise, if YOU do not tell the public why you have acted in such a manner, they can only speculate that: Ms. Ornelas and Ms. Castro were ignored because they are poor? Or Hispanic? That because Mr. Belli and Mr. Greene are notable attorneys they received special treatment? Or attorneys just should not be sued? Or that attorneys and judges have their own law? Or their own "just us"? Or they do not have to follow the law? Or maybe that there is no law? Or that there has been a cover-up? **That there is BLACK ROBE CRIME?**

Finally, I hope that YOU have learned from history. Learned Lesson #2, from the Watergate affair. Lesson #1 was do not commit the offense (of course there are some that would argue that Lesson #1 actually is, don't get caught). Lesson #2 was: come clean and come clean fast.

I apologize for the length of this letter. However, it has been said that "the law is a seamless web." It though has also been said,

and maybe more appropriate here, "oh, what a tangled web we weave, when first we practice to deceive." (Sir Walter Scott). This letter has had to do a lot of web untangling.

The public, my clients and I, await your reply.

I also would invite any comment for those receiving a copy of this letter.

Sincerely,

GARY L. ZERMAN

enclosure - photocopy of photo 30B
attachment - DFES pages 31-57
mailing list - next page 30A

cc

(This was page 30 of that letter; pages 2-29 are omitted, along with pages 30A, 30B and DFES-Detailed Factual and Evidentiary Statement, pages 31-57. These (1 and 30) pages were attached to petitioner's complaint against Chief Justice Lucas to the Commission on Judicial Performance, as exhibit 2(b), referenced in the instant petition, at ftnt. 22).